DISABILITY COMPENSATION AND DIC PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

OF THE

COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES

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DISABILITY COMPENSATION AND DIC PROGRAM

TUESDAY, OCTOBER 27, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 8:58 a.m., in room 340, Cannon House Office Building, Hon. Sam B. Hall, Jr., presiding.

Present: Representatives Hall, Montgomery, Wylie, and Hammerschmidt.

OPENING STATEMENT OF CHAIRMAN HALL

Mr. HALL. Good morning, ladies and gentlemen. This committee will now come to order.

We are meeting this morning to hold an oversight hearing on the disability compensation and DIC program.

These are probably the most important programs of the Veterans' Administration since they were created to meet the needs of our citizen soldiers who were disabled or who died from service-connected causes.

I especially want to welcome Mr. Woodall and Mr. Mars this morning. Mr. Woodall has recently been named as Director of Compensation and Pension Service replacing Charlie Peckarsky. Mr. Mars has been named as his deputy.

I understand, Mr. Woodall, you have not reported for full-time duty yet but will do so in the near future. After these hearings you may wish to reconsider. [Laughter.]

Seriously, I congratulate you both and I look forward to working with you and your fine staff.

We have asked Miss Starbuck to comment today on a number of important matters affecting the compensation program.

The committee is constantly considering new proposals and reviewing the current program, and after hearing from the Veterans' Administration we will hear from a number of witnesses from the service organizations.

Before I commence I would like to recognize Mr. Montgomery who is chairman of the Veterans' Affairs Committee, and ask that distinguished gentleman from Mississippi if he has any remarks he would care to make at this time, and then I will recognize Mr. Wylie.

Mr. MONTGOMERY. Thank you, Mr. Chairman.

I appreciate being included in this subcommittee hearing this morning, and as you say, it is certainly important, the most impor-

tant thing we have is to see that the service-connected veteran and their dependents are treated fairly, and I look forward to these hearings.

Mr. HALL. I recognize the gentleman, Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman.

I want to take this opportunity to welcome this distinguished panel this morning. The hearing is scheduled, according to the notice, to look into the administration of the compensation and pension program of the Veterans' Administration. This program involves an expenditure of some $12.7 billion this year, for this fiscal year. Obviously, we on this committee and, more specifically, the Congress, has a very special interest in this program.

I have had several inquiries I might say, Miss Starbuck, about the 11.2-percent increase in compensation which went into effect on October 1. Veterans called and said "I didn't see that in my check for October"—and I know there is an administrative detail that has to be worked out. I thought that you may want to comment on that.

I want to take this opportunity also to congratulate Mr. Max Woodall for his new assignment. I know it will be interesting and a challenge to him, and also to Herb Mars on his promotion. I congratulate both of you and I look forward to hearing from you this morning.

Thank you very much.

Mr. HALL. At this time we will hear from Miss Dorothy Starbuck.

STATEMENT OF DOROTHY L. STARBUCK, CHIEF BENEFITS DIRECTOR, VETERANS' ADMINISTRATION, ACCOMPANIED BY MAX WOODALL, DIRECTOR; HERBERT MARS, DEPUTY DIRECTOR, COMPENSATION AND PENSION SERVICE; AND NORMAN PAULSON, ASSISTANT GENERAL COUNSEL

Miss STARBUCK. Thank you, Mr. Hall.

You have recognized both the gentlemen who are facing new challenges today. I would like also to introduce Mr. Norman Paulson of General Counsel's Office, who continues to stand with both feet firm and help us with our problems in the compensation and pension program.

You have asked this morning that I discuss with you the implementation of the Former Prisoner of War Benefits Act, the effect that some of the vacancies in our high-level positions in the department have had; our review of unemployability cases, the timeliness of examinations and hospital reports which are so important in our adjudication processes, possible payments to beneficiaries who are deceased, the effects on our processes of the decision by the Federal district court with respect to radiation claims, and, you asked also that I discuss the staffing levels for 1982 and 1983 and the impact on our operations of the decision by the Office of Personnel Management to limit payment of salary increases to special rate cases.

With respect to the Former Prisoner of War Benefits Act, we are moving very quickly to implement this. The regulations with respect to this changed law have been drafted, have cleared through the General Counsel's Office, and are currently being prepared for submission to the Administrator for signature.

Following that, of course, they will go to OMB for approval and we would expect that within a month they would be about ready to go to print.

We have, however, in the interim issued a circular to the regional offices which explains all facets of the law, and in addition to that we are requesting that any cases in which ratings are accomplished with respect to former prisoners of war be furnished to central office for our review.

These ratings will provide information to the Department to present to the Advisory Committee on Former Prisoners of War.

We will make a very extensive outreach effort with respect to the former prisoners of war. We anticipate making contact with all of the service organizations and State directors of veterans' affairs, requesting their assistance in identifying among their members, or persons known to them former prisoners of war.

We do have in our records approximately 108,000 identified records of former prisoners of war.

We are preparing a new pamphlet which will explain all of the provisions of the law. This will be ready for distribution in February 1982.

Our Public and Consumer Affairs Office, which is our information service, will be assisting us in the release of publications to the news media, radio and television.

Subsequent to the study of the former prisoners of war we have labeled every claims folder in the Veterans' Administration with a special POW label, both those that are in the regional office and those that are in the records processing center.

Additionally, the Department of Medicine and Surgery marked all clinical records, identified as pertaining to former prisoners of war with that same label.

As I mentioned, our beneficiary identification records locator system does identify former prisoners of war. We had previously identified them as having 179 days of internment or less. We are amending that to show the new law provision of 30 days or less. Also we expect to have an indicator in our master record at Hines, Ill., to show prisoner-of-war status in December.

This will make it easy particularly for hospital personnel who make input to the master record to identify former prisoners of war.

We have about 40,000 claims folders on former prisoners of war at our records processing center. We are going to take a 10-percent sample of those cases and ask four of our regional offices to review them to determine the type of benefit claimed, the reason for disallowance of the claim, and we will make some attempt to locate the individual concerned. Depending on the results of that test, we will make a decision as to whether we will pull from the records processing center all former prisoner-of-war cases.

The Department of Medicine and Surgery, of course, has also moved ahead to advise all its personnel in the field on the provisions of this law.

Moving now to the review of unemployability cases: Both the members of the Veterans' Affairs Committee and the Department have been concerned about the possibility of the loss of control over these cases and, in effect, the validity of the grants of service

connection. As a result of both the review by the members of this committee and in response to a request from the committee, we provided for a review of unemployability cases. That review started in late 1980 and involved in excess of 68,000 cases.

As a result of the review we confirmed and continued over 42,000 of the cases. We changed from unemployability to a scheduler 100-percent rate in 13,137 of the cases. We reestablished controls on unemployment in 8,900 of the cases, and reduced only 3,501 across the country.

The purpose of this review was not to develop amendments to the provisions for the granting of unemployability but to assure that all of those cases were properly adjudicated and that eligibility was confirmed.

We are, however, continuing our oversight of these cases and have instructed regional office personnel to submit to central office copies of all ratings in which both a grant of unemployability and a denial have been effected. This will enable us to continue our review of the rating activity on this.

Moving now to the key positions in the Department which have been vacant, I certainly was very pleased when Mr. Nimmo approved the promotion of both Max Woodall and Herb Mars. In addition to that, the Administrator has approved Dr. Stephen Lemons as the Director of Vocational Rehabilitation and Counseling and has approved the appointment of Lew Dollarhide to be the Director of Education Service, so right now we do have a full staff on board.

We have been without a Director and an Assistant Director in the Compensation and Pension Service for some time. My deputy, John Hagan, served very well as the Acting Director of that Service and there was no diminution in any of the services or any of the issuance of procedures and policies to our regional office during that time. It just meant that John had to work about twice as fast and hard as he normally would.

I think we are moving slowly toward some improvement in our receipt of examinations and hospital reports. We are getting excellent service in some parts of the country, not so good in some others, but in the overall, while the improvement is very small, it is, we think, significant and indicative of something that can be done.

At the end of August we had in excess of 28,000 examination and hospital reports outstanding but only 2,200 of these were more than 2 months old. We would like to see a shorter turnaround, a greater percentage sent to us in 30 days or less, but we feel that the Department of Medicine and Surgery is responding positively to us and we really have no quarrel with their services at this particular time.

With respect to possible payments to deceased beneficiaries the Inspector General has initiated action to conduct two computer matches and an audit of cases.

One—both involve the C. & P. master record—involves a match against an Illinois death case file, and the second is a match of the C. & P. master records against a file of death records that has been amassed by ATL Co., which is a private contractor in Silver Spring, Md.

The Inspector General is directing these matches and expects to have by mid-December some results from both of those.

Also the Social Security Administration made us aware of some cases in which they had matched medicare records showing the payment of medical bills following the death of the insured. We became aware of the fact that some of these beneficiaries were VA beneficiaries in addition to being social security beneficiaries when checks were recovered by social security investigators.

We have identified to date six cases in which social security beneficiaries were also VA beneficiaries and we have taken action to suspend payments in each of these and will provide the records to the Inspector General for his review to determine whether there is any possibility of fraud in the cases. We will also conduct field examinations to establish actual dates of death.

With respect to the recent court decision on the subject of ionizing radiation disability claims, pending the appeal of that decision it will be necessary that we in the Veterans' Administration ignore the existence of the documents that are in question and proceed to adjudicate claims following the regulations covering such cases.

The General Counsel is working with the Department of Justice to perfect the appeal in this case, and we expect this to proceed as rapidly as possible.

With respect, Mr. Chairman, to our staffing levels, the continuing resolution which the President signed did provide for a staffing level for the Department of 16,200 positions. The nonsalary costs which we pay first, and we compute first, and then back into an employment figure, will support only a staffing level of 15,894.

The 1982 budget figures for the Department and for the entire agency continue under review by both the agency and the Office of Management and Budget, and until we have a solid figure for 1982 we cannot make an estimate with respect to 1983. We do anticipate, however, that we will be permitted the 15,894 which our funding will support.

With respect to the action by the Office of Personnel Management on special salary rate employees we have in the agency approximately 4,000 employees who are affected by this. This was an 11th-hour decision on the part of OPM, and while none of the individuals covered by special salary rates will lose salary they will not be allowed to receive the 4.8 increase which general schedule employees received.

Generally I think the increase in salary that each will get will hover somewhere between 1 and 1½ percent. That action has been put into our paid salary system. All of the people who are impacted by this change have been notified and so far we have not received any great outcry from particularly the rating board physicians who are affected by this.

The reason OPM did this was that they make an annual review of special salary rates to determine whether those rates continue to be valid, and they are doing, or are in the process now of concluding a current review, and while there is a possibility that the current review may result in either a raising or a lowering or perhaps just a decision to stay at the level it is today, no one who is on a special salary rate would lose salary.

Mr. Chairman, this concludes a summary of my statement. I, with your permission, would have the statement submitted for the record, and we will be more than happy to answer any questions you might have.

Mr. HALL. Without objection, your statement will be made a part of the record.[1] I would like to ask a question concerning the former POW's. On page 2 you state that effort is being made to identify the former POW's and that you estimate that 43 percent of the more than 100,000 former POW's who may be eligible for benefits under the act are already on our compensation and pension rolls, and you are looking for the remaining 57 percent.

Is the 100,000 figure that you mentioned, is that a rather accurate number of the POW's of——

Miss STARBUCK. That is a fairly accurate figure.

Mr. HALL [continuing]. Of World War II and Korea and Vietnam?

Miss STARBUCK. Including World War II, Korea, Vietnam, and World War I. The Department of Defense had estimated that the total count was about 125,000. During the study that was conducted, the Department of Defense provided records to us on former prisoners of war. When that listing was given to us to run against the BIRLS records, that count was about 119,000.

Now, for all of those who were identified as having a claims folder or an insurance record, the indicator showing a POW was input to the system. We wound up with about 83,000 no-record cases, the individual had not filed a claim or did not have an accurate insurance record. We took those back against the old microfilm of the central office index and we wound up eventually with, roughly, 5,000 cases that were no-record; but we have constructed records on those individuals in BIRLS.

The big problem with those cases is the ability of the Department to locate these individuals. So many veterans of World War II particularly would not have social security numbers, and it would make it very difficult for us to go to the Internal Revenue Service, for example, to ask them for current addresses on these individuals.

Mr. HALL. Do you feel that the efforts that you are making, that you outlined here, will be sufficient to try to find the biggest portion that will be recoverable?

Miss STARBUCK. Yes, Mr. Chairman, we do.

Mr. HALL. What do you estimate the time to be on that discovery?

Miss STARBUCK. If we get all of this done in a year I think that we will have accomplished a very great deal, sir.

Mr. HALL. All right.

On the second question, it deals with page 6, next to that last paragraph, next to the bottom, you say that a social security field investigation, prompted by a match of medicare death records and active social security files, turned up 3 uncashed insurance checks and 244 uncashed benefit checks, totaling $29,000.

Now, as I understand it, that seems like a very small figure to me, that such a search would turn up only 247 checks.

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[1] See p. 43.

Miss STARBUCK. Well, those were VA checks and, of course, were matched in the instance. The first case that came to——

Mr. HALL. Do you think there are more than that?

Miss STARBUCK. There should be more than that because approximately 75 percent of the persons on the pension rolls are recipients of social security, and there is every chance that there would be more than that.

I think the Inspector General is contemplating getting from social security that medicare file used to match against the active security file to conduct yet a third match against the C. & P. records.

But the first case that was turned up turned up in California, and the investigator from social security went with an investigator from VA to the home of the deceased beneficiary. Her son was there and his comment was, when he turned over all of these checks to the two investigators, was "I knew you would come after them some time." He had no intention of cashing those checks. He had just failed to notify both agencies that his mother was deceased and the checks, of course, were continuing to go there.

Mr. HALL. My third question deals with this recent court decision you mentioned, and it stated that the court here in the District of Columbia, discounting what VA's position was on these challenged documents, held that they were not promulgated in accord with the rulemaking procedures of the Administrative Procedures Act.

Are we having to change any method in the Department dealing with records of this nature that might be subject to litigation in the future, that might not be carried or promulgated subsequent to the procedures of this act?

Miss STARBUCK. Well, Mr. Chairman, we must, of course, observe pending the appeal, the outcome of the appeal, the judge's ruling. However, our basic responsibility is the adjudication of claims and, absent recognition of the documents involved, we intend to go ahead and proceed with the adjudication of claims and the obtaining of records from the Department of Defense without recognition of a memorandum of understanding.

Mr. HALL. Well, your last paragraph on 7 says:

> We acknowledge our responsibility to issue regulations pursuant to the APA, but believe that the documents challenged are not regulatory and do not fall within the APA's requirements.

Until this case has been finally decided by a higher court, or the U.S. Supreme Court, I presume that what you will do is to promulgate these questioned documents in accordance with this rulemaking procedure. Is that not an accurate statement?

Miss STARBUCK. Norm, do you want to speak to that?

Mr. PAULSON. Mr. Chairman, pending the result of the appeal, we do not intend to do that. It would be an admission of the plaintiffs' contentions.

Mr. HALL. When you issue new regs on other matters how you are going to handle it.

Mr. PAULSON. We will continue to adjudicate under the VA regulations, which we have all along. These are supplemental documents to acquire information useful in the adjudication of the claims in accord with the VA regulations, and they are specifically stated not to be regulatory, they never have been considered that,

and we believe it is entirely a misunderstanding or misinformation by the court as to the nature of these documents.

Mr. HALL. You feel pretty comfortable with the position you are taking on appeal?

Mr. PAULSON. We certainly do.

Mr. HALL. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman.

Miss Starbuck, in the testimony prepared for this morning by Mr. Egan, the representative of the American Legion, he indicates that the Department of Veterans' Benefits may lose up to 2,373 employees in fiscal year 1982. That is a rather disconcerting statement, I would have to say.

What would be your comment on that?

Miss STARBUCK. That would be true, Mr. Wylie, only if the Department were, in any budget reduction, forced to go back to the level that had been proposed by the administration in March. And that would be the reduction that would have to be taken from the current on duty strength of the Department.

However, we do not anticipate that happening at all. The administrator is really very firm in his position, which is supportive of the Department's position, that it was the intent of the Congress that the continuing resolution which included the Gramm-Latta provisions were to be applied to the Veterans' Administration, and he has not hesitated to make this position known to the Office of Management and Budget, and I feel that he will prevail.

Mr. WYLIE. In your statement that is a little bit contrawise to the statement which you made in which you say that there is—you have, 16,200 employees now, and you used that figure, and that you have budget amounts which would allow for increases in salary and so forth. So that over the year you would expect that you could staff up to 15,894, which is a rather precise figure. But that is a reduction of 306 employees as distinguished from 2,373 employees.

So what you are saying is that although the Office of Management and Budget in the first round of Gramm-Latta I, and before budget reconciliation and so forth, and before this committee had acted, had suggested a diminution in the size of your staff which might result in up to 2,300 employees having to look elsewhere.

Now you are thinking that in terms of some somewhat significantly less figure?

Miss STARBUCK. Yes, sir. I think that we will be dealing very close to the 15,894. Now, the reason for that reduction from the 16,200, which is in the continuing resolution, is the fact that we must absorb within the funding level the increases in our standard level user charges, and we must absorb the increase in postal rates that takes place in this fiscal year, and we must absorb also an increase of about 16 percent in our telecommunications costs. In the March budget guidance to the agency which involved centralization, there was about a $12 million figure in savings in SLUC as a result of release of space, and we will have to, as long as we are keeping all of our installations, absorb that.

Now in addition to that there is some unknown at this time, a probability that we will have to absorb some percentage of the October 4 pay increase, but we have no information on that.

Mr. WYLIE. Well, you have ancillarily answered my next question which I want to hone in on.

Have you been specifically requested by OMB recently, say within the last 60 days, to take any additional budget reductions?

Miss STARBUCK. No, sir, we——

Mr. WYLIE. There is no implication intended in that. We just want the information for the record.

Miss STARBUCK. Of course, the agency was asked to take additional cuts, and this cut is now a matter of conversation between the Administrator and the Office of Management and Budget. But from the indications that I have from the Administrator's office, there is little likelihood that the Department of Veterans' Benefits will be impacted by that reduction with respect to our personnel for the regional offices.

Mr. WYLIE. No specific figures have been mentioned in those——

Miss STARBUCK. We are waiting to get figures from the Comptroller's Office, and as soon as we have that figure, we will advise the committee of that employment level.

Mr. WYLIE. Thank you.

Miss STARBUCK. Mr. Wylie, if I may, you had asked in your opening remarks about the compensation increase.

Mr. WYLIE. Oh, right; yes, of course.

Miss STARBUCK. The tapes for that increase have been released to the Treasury. The Treasury Department intends to date those individual retroactive checks the 2nd of November. They hope to have them in the Post Office Department by close of business October 31 to avoid the November 1 increase in rates, and so the recipients of that retroactive increase should begin to get their checks on the 2nd, and 3rd, and 4th, depending on their location.

November is one of the months in which the 1st falls on a Sunday, so the regular check for the month of October will be dated the 30th and should be received on either Friday or Saturday, so they are going to get two checks in very rapid succession, one the retro, and one the regular, and the next month the new rate will be in the check received in December.

Mr. WYLIE. Thank you for that information. That will be good news.

With respect to the payment of checks to deceased beneficiaries, many of those checks are sent in the middle or end of a given month, in which case the beneficiary is already deceased.

What percentage of the money sent out under those circumstances is recouped?

Miss STARBUCK. I would estimate, Mr. Wylie, that we probably get back about 90 percent of that.

Mr. WYLIE. But you do have some cases where the checks are cashed and you——

Miss STARBUCK. And an overpayment would be set up against whoever negotiated the check.

Mr. WYLIE. A lot of times you can't find them and it costs more to pursue it probably than to write it off?

Miss STARBUCK. That is correct, sir.

Mr. WYLIE. But you do collect about 90 percent of it?

Miss STARBUCK. Yes, sir.

Mr. WYLIE. Good.

OMB, I noticed on their list of options still had an option of reducing spending. I think that is the frame of reference placed in the consolidation of some of the regional offices, and we went through a little scenario and effort in regards to the office in Columbus, Ohio, and I am not sure it resulted in any saving. But what is the situation? Is there any additional information on that?

Miss STARBUCK. I don't think there will be any consideration of possible regionalization or consolidation in 1982 or 1983. I don't think that the idea has died. I think somewhere it still germinates.

And I feel that it is incumbent upon the Department of Veterans' Benefits to review the operations of the Regional Office to assure that this mechanism of the Regional Office or some, perhaps change in that mechanism, is the most effective delivery system for veterans' benefits, and so that at the end of such a review we can go to the Administrator confident that we do have an honest and fully evaluated package that he can support before the Office of Management and Budget.

Mr. WYLIE. Thank you.

That is all the questions I have right now, Mr. Chairman.

Mr. HALL. On your rating board, doctors who did not get the 4.8 increase, do you anticipate any problems in recruitment?

Miss STARBUCK. No, sir; we do not, nor does the Board of Veterans' Appeals.

Mr. HALL. Miss Starbuck, we thank you for your very excellent statement. It always is good. I am not telling you anything I haven't said before.

Miss STARBUCK. Thank you, Mr. Chairman.

Mr. HALL. We appreciate your being here, and accompanied by your entourage that you always have when you come to Congress.

Miss STARBUCK. Well, as I used to say when I traveled about the European Theater of Operations in World War II, I was coming out of the I. G. Farben Building after lunch one day and someone approached me and said, "How come you are always accompanied by these three captains?"

I said, "Any aircraft in this theater that is as big as I am has to have a fighter escort." [Laughter.]

Mr. HALL. You would like to have that on the record, would you not?

Miss STARBUCK. Not necessarily, sir.

Mr. HALL. Well, it's on there for good.

Miss STARBUCK. Thank you, Mr. Chairman.

Mr. HALL. Thank you.

Next we have Comdr. John Wanamaker representing the Retired Officers Association.

STATEMENT OF COMDR. JOHN F. WANAMAKER, U.S.N., RETIRED, REPRESENTING THE RETIRED OFFICERS ASSOCIATION

Commander WANAMAKER. Mr. Chairman and members of the subcommittee, I am Comdr. John F. Wanamaker, U.S. Navy (retired), I am the deputy director of legislative affairs of the Retired Officers Association which has its national headquarters in Alexandria, Va.

Our association has a membership of over 305,000 former and active-duty officers of the seven uniformed services.

I want to thank the members for providing me this opportunity to present the views of the Retired Officers Association on issues within the oversight responsibility of this subcommittee.

The disability compensation program is the largest benefit program administered by the Veterans' Administration, and I want to commend this committee for holding these oversight hearings to insure that the current programs are accomplishing the purpose for which they were intended, but also to insure that the taxpayers' dollars are being best utilized to meet the requirement of providing disabled veterans compensation for loss of potential earnings.

The veterans' disability compensation program's purpose is to provide relief for the impaired earning capacity due to disease or injuries resulting from military service. The current disability compensation program has serious flaws which I would like to bring to the attention of this subcommittee for consideration.

First, the basic rates of disability compensation are inadequate. The ratings according to section 355, title 38, are "to be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civilian occupations."

I would call the committee's attention to a comparison to the Government's range of compensation for its civilian employees.

The monthly rate of compensation under section 8110, title 5 of the United States Code, states that it may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for a GS-15, and in the case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for a GS-2 or the amount of the monthly pay of the employee, whichever is less.

These rates would currently be $3,132 a month and $586.29 per month. I would suggest from this that those military employees that receive the basic pay equal to the GS-15 and are totally disabled should receive the same or similar compensation, which is 66⅔ percent of their monthly pay or $2,784.

The military veteran employee with similar earnings would receive $1,130 or less than one-half as much.

This single comparison of the total disability ratings between veterans and civilians is sufficient for the committee to task the Administration to develop a comparison for all percentages of disability ratings.

I maintain that should the military employee be an aviator or nuclear engineer or medical officer, of such specialized skills and other educational accomplishments, his disability loss in earning capacity should be considered when making compensation determinations.

I believe that the members of this committee should insure that a service-connected disabled veteran receives at least as favorable compensation as that paid to a disabled civilian employee.

I strongly urge the committee to review the wording in section 355 of title 38 and I suggest that the vague term "average impairments of earning capacity" does not meet the veteran's requirement for disability compensations.

It is very probable that the statute requirement that disabilities must be rated in percentages does not provide the Veterans' Administration Administrator enough flexibility in making compensation determinations.

When one tries to provide compensation for persons disabled one must consider the individual differences of the earning capability lost, such as between a private and a skilled medical officer. A single percentage rate will not satisfy this difference, and it may be necessary to start all over and develop a new program.

Mr. Chairman, there exists one group of veterans that are not adequately compensated for service-connected disabilities. The group to which I refer are those veterans who have served 20 or more years and who have become retirement-eligible for years of service. If they should become disabled on active duty these veterans would receive the greater of the disability retired pay or retired pay based on years of service.

The length-of-service retiree who is also disabled must in effect pay for his own disability compensation. He must forfeit an equal amount from his retired pay for years of service, in order to receive the VA disability compensation.

Veterans' disability compensation is paid to replace future earnings lost because of disease or illness attributed to military service.

Military retired pay for longevity, on the other hand, has no connection with disease or injury.

The payments are for two completely different circumstances and should be paid concurrently.

An inequity occurs when a civil service employee veteran can receive VA disability compensation while employed and also while in retirement without a reduction in either annuity. He can even use his years of military service for credit toward his civil service retirement.

I ask you, Mr. Chairman and members of the subcommittee, where is the basis for fair and equal compensation for injuries in these situations? I strongly urge this subcommittee to favorably consider legislation currently before this committee to correct this inequity.

As of April 1, 1980, the various States, in order to meet the Federal approval of their unemployment compensation systems, reduced unemployment compensation by the amount an individual receives in other retirement income. This other income includes periodic payments received as military disability retired pay and veterans' disability compensation.

This Federal law has now been amended to allow States the option to offset the unemployment compensation for those receiving retirement income. Most States still require an offset by receipt of VA disability compensation.

I maintain that this completely refutes the intention of the Congress in providing the disability compensation. I strongly urge this committee to favorably consider legislation to correct this anomaly. I believe that VA disability compensation should be just that, and should not be the basis for reduction in other Federal or State entitlements, programs to which they may otherwise be eligible.

The Public Assistance and Unemployment Compensation Subcommittee, Committee on Ways and Means, is addressing this issue

in hearings tomorrow. I urge the members of this subcommittee to bring their influence upon that committee in this important matter.

Mr. Chairman, I will now address the dependency and indemnity compensation program. This program provides benefits to the survivors of a member or former member whose death occurs on active duty or as a result of a service-connected disability. The monthly rates paid to a surviving spouse are based on the pay grade of the service member at the time of death or release from military service.

I recommend that the benefit schedule be truly increased, as necessary, to reasonably insure the maintenance of the survivors' standard of living.

Our Nation has a long outstanding record in providing benefits to the survivors of those whose husbands and fathers may have given their lives in the service of their country. For this our Nation and this committee in particular in exercising its responsibilities in this regard can be justly proud.

There have been some who have expressed the opinion that a standard "flat rate" be established to pay all surviving dependents. Those who advocate this have no understanding of the basic concept under which the dependency and indemnity compensation program is established.

I might add that a 940-page study conducted by the Senate in 1978 recommended that the current DIC method based on grade/rank be maintained and adjusted periodically for the cost of living. The DIC program attempts to replace the potential earnings lost to a family as a result of the service member's death.

I have prepared a chart which illustrates the replacement of wages through the DIC program administered by the Veterans' Administration and then makes a comparison with that provided to Federal civilian employees of similar income.

DIC (no child)					Civil service widow (no child)		
Pay grade (YOS)	Basic pay—monthly	RMC	DIC	Percent RMC	Grade	Monthly salary	50 percent annuity
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
E-1	$551	$735	$415	56	GS-2	[1]$782	[1]$391
E-2	618	824	428	52	GS-2 (3)	826	412
E-3 (0-2)	678	903	438	49	GS-2 (7)	908	454
E-4 (0-4)	822	1,095	466	43	GS-4 (5)	1,084	542
E-5 (0-8)	966	1,287	479	37	GS-5 (7)	1,286	643
E-6 (0-12)	1,156	1,541	490	32	GS-7 (6)	1,548	774
E-7 (0-14)	1,332	1,775	514	29	GS-9 (4)	1,786	893
E-8 (0-16)	1,542	2,055	542	26	GS-9 (9)	2,056	1,028
E-9 (0-20)	1,844	2,458	567	23	GS-11 (9)	2,487	1,244
W-1 (0-12)	1,384	1,845	525	28	GS-10 (2)	1,847	924
W-2 (0-16)	1,615	2,153	546	25	GS-11 (4)	2,160	1,080
W-3 (0-20)	1,917	2,555	562	22	GS-11 (10)	2,553	1,277
W-4 (0-22)	2,254	3,004	595	20	GS-13 (3)	2,985	1,493
O-1	1,057	1,408	525	37	GS-7 (3)	1,415	708
O-2 (0-2)	1,329	1,772	542	31	GS-8 (7)	1,763	882
O-3 (0-4)	1,846	2,460	580	24	GS-11 (9)	2,488	1,244
O-4 (0-10)	2,216	2,954	613	21	GS-12 (9)	2,981	1,490
O-5 (0-16)	2,785	3,713	676	18	GS-14 (5)	3,748	1,874
O-6 (0-20)	3,354	4,471	761	17	Maximum	4,176	2,088

DIC (no child)					Civil service widow (no child)		
Pay grade (YOS)	Basic pay—monthly	RMC	DIC	Percent RMC	Grade	Monthly salary	50 percent annuity
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
O–7 (0–20)	$4,176	$5,529	$824	15	Maximum	$4,176	$2,088
O–8 (0–20)	4,176	5,529	903	15	Do	4,176	2,088
O–9 (0–20)	4,176	5,529	970	15	Do	4,176	2,088
O–10 (0–20)	4,176	5,529	1,061	15	Do	4,176	2,088

[1] Minimum.

You will note in referring to the chart that I have converted the military basic pay to regular military compensation, which includes factors for subsistence and housing allowances. These components are generally valued at approximately one-third the basic pay of the service member.

By using the accepted replacement income of 50 percent and comparing column 5 of the chart, all but the lowest enlisted grade categories fall below this accepted level under the current DIC program for a surviving spouse with no dependents.

As an example, you will note that the surviving widow of an O–5, which is a commander or lieutenant colonel, with 16 years of service will receive an amount of $676 a month in dependency and indemnity compensation. This replaces only 18 percent of regular military compensation at time of death.

Generally one-fourth is considered the amount a family would expend for shelter alone. This widow would be unable to provide the other necessities of life. Obviously this widow would be in trouble if she should lose her husband, and I believe that most members would agree, the DIC annuity does not meet this woman's basic needs in income replacement.

I would now ask the members of the committee to compare the 50 percent income replacement of the Federal Civil Service with the military member, compare the DIC [column 4] with column 8, payable to a civil service surviving spouse. I implore the committee to provide a similar program to its military members.

The committee should look at the difference between a careerist and a civilian soldier who comes on active duty for a limited period during an emergency. I think there should be a distinction between these two.

The civil service surviving widow can receive the benefit until death or until she remarries before reaching age 60. This committee should authorize surviving widows who are receiving benefits under the DIC program to continue to receive these benefits if they should remarry after age 60.

Other Federal programs such as social security, military survivors benefit plan and the civil service survivorship annuity plan have been modified to prevent the necessity for these older beneficiaries from living in sin. I urge you to provide the same consideration for the DIC widows. The costs of such a program would be minimal.

Regarding the budget impact on the compensation program, I am pleased to hear the comments of Miss Starbuck this morning to indicate that the October 1 increased payments are being made very rapidly, without a long delay.

This sensitive issue must be addressed, since during the consideration of the fiscal year 1982 budget there were serious proposals which could have a devastating impact on various veterans' programs.

First, the House Post Office and Civil Service Committee proposed legislation in response to the first concurrent resolution, and incidentally without the benefit of hearings, which would have reduced about 114,000 veterans' salaries by the amount they receive in military retired pay. Many in this category receive military retired pay for disabilities resulting from military service.

This proposal would also have had an adverse impact on many reservists who spent 20 or more years in service to their nation had it been enacted.

I believe it is a responsibility of this committee and its members to insure that veterans' benefits be protected and therefore they should have objected to the action of the House Post Office and Civil Service Committee.

That same committee has been especially hostile to veterans by removing the veterans' preference eligibility from those veterans who have been military retirees with 20 or more years of service and who may have attained the grade of O–3 or above. That committee also passed legislation to restrict post military service employment in the Federal Government.

I consider the actions of the House Post Office and Civil Service Committee to be a slap in the face and a breach of faith to the veteran community.

The Senate Veterans' Affairs Committee, in reaction to the first concurrent budget resolution held hearings on seven bills only 7 days after their having been introduced. Each of these bills were attempts to curtail or reduce various veterans' programs.

This is a poor method of legislating, and I would suggest that this committee resist this haphazard approach to the review of veterans' programs.

I would like to comment on several of these proposals that were only set aside when it was determined that the required savings could be accomplished by deferrals and delay in other programs.

The Senate Veterans' Affairs Committee proposed a reduction in VA compensation by the amount an individual may receive in social security benefits by reason of disability or having reached age 65.

Now, you must consider that a spouse's benefit may accrue to a veteran by social security attributed to another's employment. A benefit derived from a wife's work who may also provide the care and attendance for a 100-percent disabled veteran should not have that spouse's benefit be the basis for a reduction in veterans' benefits. Our association would strongly object to this proposal.

The Senate Veterans' Affairs Committee also proposed that a single check be sent by the various military departments which would reflect his retired pay and any VA benefits.

First, I fail to see how this would reduce costs since each department or agency must separately determine the amount of each benefit, and I believe added costs would accrue by the need for coordination. It is strange that certain sectors which have opposed our efforts to authorize military retirees to pay VGLI premiums

through military allotments, and the reason that they objected was that that was too costly, would now consider combining the two compensation systems.

And, one last thought. Whether the budget process was responsible or not, the delay in increasing in compensation and DIC results in a reduction in the benefits to the beneficiaries. Even a 1-month delay results in over a half-a-million-dollar loss to beneficiaries, even though the payments are made retroactive to October 1.

The delay adds costs to the taxpayers through the necessity of issuing additional checks and mailing, as previously indicated.

There has been considerable talk of proposals to change the methods by which entitlement programs are adjusted.

And just this morning coming to this hearing I heard that the Department of Labor has come up with a new proposal to adjust the CPI. This committee should insure that any change will not forever place the disabled veteran and dependents of veterans in a position whereby their standard of living will constantly diminish.

To change the CPI adjustment to the lower of the average wage growth or CPI increase or to a lesser percentage of the CPI would cause a constant reduction in real income. These approaches should be resisted with all your vigor.

I want to thank the committee for allowing me to provide the views of the Retired Officers Association on these important matters, and I will be very glad to provide any answers which I may.

[The prepared statement of the Retired Officers Association appears on p. 51.]

Mr. HALL. Thank you, Commander, for your usual well-worded statement.

I would like to ask you one thing. You say that the term "average impairments of earning capacity" is vague.

Commander WANAMAKER. Yes, sir.

Mr. HALL. Do you feel that each claim should be based upon the individual under consideration rather than an average, overall average impairments of earning?

Commander WANAMAKER. Sir, to answer your question, yes. There is a considerable difference between individuals and their earning capacity, and it should be considered when that determination is made.

Mr. HALL. Well, I know that, and I always have to kind of relate sometimes to the trial of a lawsuit on damages. In any special issue that might be submitted by a court to a jury there is always a question submitted, what do you find from a preponderance of the evidence to be the lost earning capacity or the lost future earnings of this person during his workable lifespan, and that term is used interchangeably in any case, whether it be a musician or a butcher or a baker or whatever. Do you say that that is not the proper procedure to follow?

Commander WANAMAKER. When that court question is asked they are talking about the individual, and that is a correct procedure to follow; yes, sir, not to blanket across the board every individual. It should be for that individual.Yes, sir.

Mr. HALL. And you say now that for a person who is compensated based upon the language I mentioned at the outset, average impairment of earning capacity is not adequate?

Commander WANAMAKER. That is correct, sir.

Mr. HALL. How would you change it? If the average earning capacity of an individual is not sufficient how would you change the wording?

Commander WANAMAKER. I would make it applicable to someone involved.

I would suggest, Mr. Chairman, that you use the criteria that have already been established for the Federal civilian employee, and they use factors such as his service record, which is a vague term itself, considerations of his length of service, his position, and these various factors, and they consider things other than just his average wage.

And it is listed, in title 5, United States Code, for the Federal civil service, there is a schedule of determination; it may not fulfill the exact requirements for this committee in these cases, but I think that is a good start.

Mr. HALL. I just want to ask Mr. Paulson a question.

Are these proceedings, and you might want to get on a mike, I don't want to prolong this but I am interested in the point I am trying to make.

When a veteran has a claim decided, is not it a fact, using the special-issue approach that I mentioned a moment ago in the trial of civil cases, don't you take into consideration all of the veteran's background based upon his future loss of earning capacity in arriving at an award?

Mr. PAULSON. Under the present circumstances, no. It is an average impairment of earning capacity schedule. This permits, for example, a person who may be scheduled 100 percent disabled, but who is nevertheless holding down a good job, payment of compensation for a 100-percent disability along with his earnings.

Mr. HALL. If you consider Van Cliburn who uses his hands, if he lost a hand, I am using this as a comparable, would you take Van Cliburn on one hand as opposed to a man working in a meat market carrying meat, but you would consider the loss of earning capacity for the future equally for both of those people?

Mr. PAULSON. The average impairment.

Mr. HALL. The existing law structure?

Mr. PAULSON. Under the schedule as presently set up, the average earning capacity of the individual, with that type of disability is considered for the scheduler rating. Nevertheless, because of the nature of Van Cliburn's profession he may be totally unemployable even though the scheduler rating was considerably less.

Mr. HALL. Well, aren't you still considering it from each individual standpoint in the ultimate end result?

Mr. PAULSON. Only to that extent, that he may be, one individual may be totally and permanently unemployable with a scheduler rating under 100 percent. But as I set out, if the individual earning capacity or earning probability were considered as distinguished from average impairment, a person who is fully employed, even though under the schedule he was 100 percent disabled, would not be able to get his compensation.

This would be a disincentive. In other words, under the schedule as it is set up now and under the regulations for adjudication, this encourages a disabled person to construct a useful life for himself

and earn in addition to his compensation, whereas if you were basing the rating only on the individual capacity this would be destroyed.

Mr. HALL. I see what you are getting at. I am not sure I altogether approve of policy.

Mr. MOON. I think to illustrate the point Commander Wanamaker was making, that if you have two veterans who are each totally disabled and unable to work, one of them was a lowly paid janitorial-type worker who never made much money, and the other one was a skilled surgeon who had annual income in six figures, under the rating schedule they would receive the exact same total disability evaluation.

To take it a step further, as you were just discussing Van Cliburn, his loss of a hand would be less than total, but the VA does have the authority to make extra scheduler ratings in certain cases. His average employment would probably be in the 30 to 40 percent range, but if he could prove that his loss of his hand had a most devastating effect on his ability to earn a living the VA would have the authority to grant an extraschedular increase to him.

But for a totally disabled veteran there would be no difference in the rate of pay, rate of VA benefits, based on his standing in civilian life.

Mr. HALL. I direct this to Mr. Wanamaker or Mr. Paulson or Mr. Moon, has any estimate been made as to the increase, how much more it would cost if you considered each case on its individual merits with reference to future earning capacity or the loss of future earning capacity?

Commander WANAMAKER. I have not, Mr. Chairman, made that estimate.

But I think, Mr. Chairman, that there probably are close bases for making this determination by looking back at the civil service history. They have as you know, for a long time made these determinations on various individuals, and I think that type of information should be available.

Mr. MOON. Such a policy would be fraught with administrative details. It is very easy to measure the salary of a Federal employee that is fixed by statute, but when you have a man who is in business for himself, doesn't have an economic status that can be measured with any degree of certainty, such determinations as to his individual loss of earning impairment would be subject to a never-ending litigation, of appellate procedures that could not be arrived at with any degree of certainty.

That is one of the reasons we go to the average impairment concept.

Mr. HALL. The gentleman from Ohio, Mr. Wylie.

Mr. WYLIE. Thank you very much, Mr. Chairman.

I want to refer to your testimony on page 6, Commander. You say a reduction in VA compensation by the amount an individual may receive in social security benefits by reason of disability or having reached age 65.

Now that doesn't apply to a pension, if a veteran gets 20-years active duty in and is eligible for a pension?

Commander WANAMAKER. No, sir; it does not.

Mr. WYLIE. Tell me a situation in which this would apply to what you are talking about.

Commander WANAMAKER. Well, I am speaking now of the proposal that was introduced in the Senate (S. 1059), but what it would have done is that a 100-percent totally disabled veteran [code 18 veterans] who may be receiving compensation that would have the compensation limited to the greater of the code 18 rate reduced by the value of social security at age 65 or disability. It was not favorably considered over there, but it was proposed over there.

Mr. WYLIE. But at the present time a veteran can receive compensation from the VA and then have to have an extra 5 years or 20 quarters, if they get 20 quarters in under the social security system they can receive disability benefits under the social security system?

Commander WANAMAKER. Yes, sir.

Mr. WYLIE. That's right, and you say there is a bill in, but that's not, the situation now is that they do receive both of those, right?

Commander WANAMAKER. Yes, sir.

Mr. WYLIE. Okay. I wanted to clear that up in my mind.

Now you also talk about a situation where a wife, for example, might qualify for 100 percent disability compensation from social security.

Commander WANAMAKER. I might clarify that. I am speaking now of the wife of a veteran who may be caring for a 100 percent disabled veteran, receiving 100 percent total disability compensation from the VA.

And that wife is working, she works under social security and she gets her 20 quarters in and becomes disabled or retires.

Mr. WYLIE. That's right.

Commander WANAMAKER. And when she is eligible to draw social security and her spouse reaches age 62, that spouse, then, is also eligible to receive a social security benefit based on that wife's employment.

Mr. WYLIE. So what is it, half of her benefit?

Commander WANAMAKER. Half of her benefit. It varies a little bit whether she takes early or late retirement, the exact half, if you go the full amount. But if he takes early benefits it would be reduced. But basically one-half would be the veterans spouse benefit.

What I am saying here is that here is a wife of a veteran working hard all her life and providing a spouse's benefit for her veteran husband. That spouse's benefit should not be the basis of reducing a veteran's benefit when he is 100-percent disabled and not able to be employed.

I think that is really unfair.

Mr. WYLIE. The spouse's benefit is the benefit as defined by law. Of course that has been the subject of some considerable amount of discussion. There was also a proposal that if a spouse received the benefit under the circumstances and the other spouse was, say, drawing from public employees' retirement benefit that the amount of the spouse's benefit, it would be reduced.

Commander WANAMAKER. Now that is something that comes up in the social security laws, and I am a little shaky on this, so I may not be exactly accurate. I will give you my best impression.

Beginning in 1982—it is already wiped out for men, incidentally—a woman cannot draw a spouse's benefit if they are in receipt of another Government retirement annuity. They extended the year, for 5 years, after that law in 1977 was passed, that women can draw that spouse's benefit in order for a woman to be able to work her way out of something she may have committed herself to under prior laws.

But in 1982 the woman, drawing a spouse's benefit and who has been a Federal employee will also, according to current law, have that reduced or eliminated.

Now I may be a little shaky on that, but that is my impression.

Mr. WYLIE. I think you have it focused pretty much.

I listened and understand what you are saying in your paper here. Do you have any cost figures or any estimates as to what this would cost, what you recommend? I don't know if there is any way of getting at it.

Commander WANAMAKER. I don't have the facilities, so that is one of the reasons, Mr. Wylie, why I recommended to task the Veterans' Admnistration to come up with some of these studies, because I feel that they are needed so we can get a handle on them. I really don't know.

Mr. WYLIE. But it would be considerable, though.

Commander WANAMAKER. Oh, yes, sir. I am pretty sure it would be.

Mr. WYLIE. Thank you.

Commander WANAMAKER. Thank you.

Mr. HALL. Thank you very much. We appreciate your appearing.

Now we will have Mr. Paul Egan, assistant director, National Legislative Commission, accompanied by Mr. Robert E. Lyngh, director of National Veterans' Affairs and Rehabilitation Commission.

Welcome, gentlemen.

STATEMENT OF ROBERT E. LYNGH, DIRECTOR, NATIONAL VETERANS' AFFAIRS AND REHABILITATION COMMISSION, ACCOMPANIED BY PAUL S. EGAN, ASSISTANT DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. EGAN. Mr. Chairman, I am Paul Egan, assistant director of the National Legislative Commission. Our witness this morning is Bob Lyngh who is, as you said, the director of our rehab division and he will summarize our statement and we ask that the full text be included in the record.

Mr. HALL. Without objection, it will be so ordered.[1]

Mr. LYNGH. Mr. Chairman, before I proceed into the summarization of the prepared statement I would like to, if I might, on behalf of the American Legion offer a brief comment on the dialog that took place between the Chair and the previous witness with reference to the average economic loss experienced by those who incur service-connected disabilities and say on behalf of our organization that one of the factors that enters into the formula for assigning

[1] See p. 59.

disability compensation is that the Government, and certainly with the support of the American Legion, basically equates the value of service of the private and the general, our feeling being that in time of war, or national emergency, the individual citizen when called into service contributes what he can.

And in our view if the private and the general both lose a leg in service the leg of the private is as valuable to him as is the leg of the general to himself.

So while that is not the only basis upon which the formula is developed it is one of the important bases, and any deviation from that could at least raise the possibility of beginning to evaluate the quality and the value of service based upon the individual's rank or the assignment that he might have on a duty basis while in active service, and we think that would not be the egalitarian approach that has prevailed in the Government's consideration of this very important matter.

With the Chair's permission I will proceed to my prepared statement.

The American Legion appreciates the opportunity to appear this morning.

It is our understanding the subcommittee is considering the possible effects of further budget cuts on the operations of the Department of Veterans' Benefits of the VA, the effect of delays in filling key staff positions in DVB, timeliness of implementation of new legislation and analysis of review of unemployability cases.

The American Legion seizes this opportunity to protest once again in a congressional forum the continuing efforts of the Office of Management and Budget to curtail funding for the operations of the Veterans' Administration.

In the budgetary dispositions that were made by the new administration in the spring of this year the American Legion supported what became known as the Gramm-Latta resolution or the Reagan bipartisan budget.

In that allocation of funds for activities of the Federal Government veterans programs were slated to lose something in the neighborhood of $110 million. This was down from the $840 million that OMB proposed in March to take from veteran programs. That $110 million was the approximate amount lost to veterans programs in the Budget Reconciliation Act of 1981 that went to the President for signature.

As a matter of fact veterans lost one benefit in the Reconciliation Act, the burial benefit, to which loss the American Legion strongly objected and which we will petition Congress to restore because we believe it is a benefit earned and deserved by veterans who have honorably served the Nation.

The Department of Veterans' Benefits maintains a staff of some 16,000 in the 58 regional offices. These personnel have provided a level of service that, while not as prompt and efficient as we would like to have it, nevertheless has been able to dispose of applications for benefits within a generally reasonable time frame.

We find ourselves now confronted by a new crisis. Following enactment of the Budget and Reconciliation Act the fact is there has been no appropriation act for VA for fiscal year 1982. Therefore, VA today, as is also true of other departments and agencies of

Government, is operating on a continuing resolution that extends to November 20.

What has happened is that OMB has instructed VA to spend at 14 percent below the level agreed to in the Reconciliation Act, the level projected by the administration following the President's most recent budgetary adjustments of September. In the case of VA these September figures reverted to the figures allocated to VA by OMB in March of this year.

What we have here are severe restrictions on the level of spending for the new fiscal year, imposed by OMB without congressional mandate. We do not see how this action can fail to impact stringently on every activity of the entire VA.

Under these current instructions from OMB, if they are maintained, DVB stands to lose as many as 2,373 personnel during fiscal year 1982. This would be more than 10 percent of its total work force. Should that happen there is no way DVB can maintain the present standard of service to its clientele.

It is our belief that the administration has exceeded the congressional mandate in this matter of early funding for fiscal year 1982. The continuing resolution made clear that funding was to be at the level of the compromise agreement between the Houses on the appropriations measure, H.R. 4034.

That is not how OMB has instructed departments and agencies to proceed.

In the view of the American Legion what is going on here is impoundment, an executive activity that Congress took note of some years ago with passage of the Budget Control and Impoundment Act.

The American Legion does believe and recommends to the subcommittee that in fact Congress should call the administration to account for failing to adhere to the legislative requirements of the continuing resolution under which the executive branch is now operating.

It is our hope the subcommittee will intensively pursue this entire matter of manpower levels in DVB before allowing any substantial reductions to be accomplished.

Concerning the matter of delays in assigning personnel to key staff positions we believe, of course, that key staff positions at the Central Office level should be regularly filled to assure Central Office policy support for the field.

We assume some delays that have occurred recently may be the result of the extended transition the agency has experienced. The new management team is now installed and functioning. We note the senior positions in DVB are now filled. Should any further vacancies develop we will expect them to be filled with reasonable promptness.

Concerning implementation of new legislation we note, again without surprise, that the agency's record is mixed. We expect and usually experience prompt action in implementing delivery of new and adjusted benefits.

Implementation of more complex legislation affecting benefits can be delayed, resulting often from the difficulty of drafting regulations which require coordination with more than one element within the agency.

In this regard it can only be said that no bureaucracy is noted for speed of action. Our concern, to repeat, is in delivery of new and adjusted benefits. We do believe DVB makes a good-faith effort in that regard.

The subcommittee is also concerned at this time with the code 18 review. This review involves those service-connected cases in which the claimant is rated totally disabled by reason of individual unemployability on an extraschedular basis.

This review was instituted about 1 year ago and we understand it was from an expressed desire of the House Committee on Veterans' Affairs.

At the outset The American Legion was apprehensive that rating boards would interpret the review order as one to eliminate individual unemployability ratings. Our service officers were alerted to study thoroughly each case where the Legion is the designated representative and to intervene where necessary on behalf of the claimant.

We believe experience to date with the review has proved to be a vindication of rating board action generally within DVB.

We have not received an excessively large number of cases from our service officers protesting action by rating boards, other than utilization of the appellate procedure.

Our conclusion, therefore, at this point is that the review is being conducted in a generally responsible manner and that it has not turned, as we were apprehensive, into a witch hunt.

If the review continues and if we detect a generalized effort to reduce ratings, especially of severely disabled neuropsychiatric cases, we shall make appropriate representations to the agency and if necessary we shall petition the Congress through this committee.

Mr. Chairman, we appreciate this opportunity.

Mr. HALL. Thank you, Mr. Lyngh.

We are always happy to have the view of the Legion. You have been very helpful to this subcommittee and to the full committee, and we are going to make every effort to see that you have adequate funds, that some of the things you are concerned about with OMB does not happen.

Mr. LYNGH. We appreciate that, sir.

Mr. HALL. Mr. Wylie, the gentleman from Ohio, will be recognized.

Mr. WYLIE. Thank you very much, Mr. Lyngh.

Were you here when I asked Miss Starbuck about your statement which appears on page 4 that the VA stands to lose 2,373 jobs this fiscal year?

Mr. LYNGH. Yes, I was, sir.

Mr. WYLIE. Were you reassured?

Mr. LYNGH. Yes, to some extent, sir.

If I might just extend on your question, which was certainly a most appropriate one; as we understand the situation in the executive branch what is ongoing now are negotiations between the Office of Management and Budget and the various departments and agencies of Government, which would include the Veterans' Administration.

We do believe that instructions were in fact issued from OMB to the Veterans' Administration to restructure their budget projec-

tions back to the March figures. Had that occurred, or should it occur, and we have seen nothing in writing to assure that it won't occur, the Department of Veterans' Benefits could experience a rather substantial loss in personnel.

We understand that the negotiations at this point seem to look favorable to a maintenance of the personnel level in DVB, but we don't think the cause for apprehension is totally eliminated because these negotiations, as we understand it, definitely are not complete, and there has been no final commitment by the Office of Management and Budget with reference to the budgetary projections for the agency.

Mr. WYLIE. Well, I must say that I thought Miss Starbuck addressed it when she said that there had been some negotiations and that they apparently decided not to press for the March figure, and in the continuing resolution I must say that that is an indication that there might be some attrition over the period of the next, fiscal year 1982, but I think Miss Starbuck indicated that she thought the actual loss in personnel would be somewhere in the neighborhood of 300, which is considerably less, of course, than 2,373.

And I would suppose that that probably wouldn't be a figure that couldn't be accomplished.

Anyhow, I think it is fine for you to bring up the subject and to make the point and know that this subcommittee, as our chairman has suggested, will maintain oversight.

Mr. LYNGH. Well, if I might offer a final comment on this subject, Mr. Chairman and Mr. Wylie, of course the American Legion was disappointed because, when these reprojections were requested, because we had believed that the administration at the time the Gramm-Latta resolution was put forward and approved by Congress and this organization, among many others, did support it, we believed there was an understanding at that time that the figures in the Reconciliation Act that went to the President in August would prevail and would be the figures provided for the agency for fiscal year 1982.

A late decision, and we understand the problems that the Government is facing with reference to the provision of funds for the whole government at this time. However, you know nothing, certainly, has a higher priority than funding for veterans' programs.

And some of these projections dating back to the March figures, were they accomplished, in violation of what we had understood was an agreement by the Administration, could be devastating to the delivery of benefits to veterans, all of whom are poor, and many of whom are severely disabled, which this committee well knows.

So it is a very serious matter, and we——

Mr. WYLIE. I have some confusion in my mind over it. Where do you get the idea that the administration has now gone back to the so-called March figures?

Mr. LYNGH. The administration hasn't definitively gone back to the March figures. What the administration did do, was ask the agency to recompute its budgetary predictions for fiscal year 1982, based on the original March figure, the President's March figures.

And those refigured computations were submitted to OMB. However, they were not submitted with the approval of the agency; that's why, as we just stated, negotiations are ongoing.

Mr. WYLIE. The VA submitted figures, but they said this, we are submitting them at your request and do not approve——

Actually they should have cleared that up.

Mr. LYNGH. That's right.

Mr. WYLIE. Somebody with the VA didn't clear that up.

Miss Starbuck is still here.

Miss STARBUCK. Mr. Wylie, and Mr. Chairman, as I mentioned, the administrator is fully aware of what had happened in the March budget guidance which we received. It is his firm opinion that should OMB at this time attempt to take us back to that March figure that the President would be ill-advised, having accepted the Gramm-Latta amendment in the budget.

The administrator views as anathema the idea of a consolidation of regional offices or a reduction in personnel that would take us beyond our capability currently to deliver benefits. And in his negotiations with OMB he is very firm in his conviction that there was a commitment made by the Office of Management and Budget, as was agreed to with Chairman Montgomery, that we would accept the Gramm-Latta amendment.

Mr. WYLIE. But as I understand it from Mr. Lyngh, the VA did submit figures without approval, just merely submitted the figures based on the so-called March budget estimate for VA from the Office of Management and Budget?

Miss STARBUCK. This is the basis for the negotiations that are now ongoing, and we feel really, in the agency, that the Administrator will prevail in his position with respect to the funding for the agency.

Now I think there is a possibility that there will be some reductions in some areas, but it is my feeling right now, and again, as Mr. Lyngh has mentioned, none of us has anything in writing, but it is my feeling and strong feeling that the Administrator will prevail in this with respect to DVB.

Mr. WYLIE. But when you submitted your figures to the Office of Management and Budget without approval, merely passing on information which was requested of you based on the budget figures, estimated in March, did that indicate a loss of 2,373 employees for fiscal year 1982?

Miss STARBUCK. When we responded to the March directive initially, of March 10, we made it very clear to the Office of Management and Budget that what they were proposing at that time was chargeable to a consolidation action, a total of 1,650 personnel in fiscal year 1982, anticipating that the consolidation would be half completed in fiscal year 1982, charging another 1,650 in fiscal year 1983.

That directive of OMB went by the board in the acceptance of the Gramm-Latta provision, and as a consequence then any consideration of consolidation or massive reduction in personnel was brought to a halt.

Mr. WYLIE. But at no time did anybody from the Office of Management and Budget or the VA suggest that there would be a loss

of 2,373 veterans jobs, Veterans' Administration jobs in fiscal year 1982?

Miss STARBUCK. No, sir. As I said earlier, if the Office of Management and Budget were to prevail over the Administrator's objections and the VA would have to go back to the March figure, in order to reach the March figure it would be necessary that we reduce from our current employment level at approximately the level which Mr. Lyngh has indicated.

Mr. WYLIE. You said over 2 fiscal years.

Miss STARBUCK. Well, that was the original plan, sir. But if we are forced to do it in a year it would cost us that much in personnel. But I am confident that that will not happen.

Mr. WYLIE. Yes. The full court press is not being put on?

Miss STARBUCK. That is correct, sir.

Mr. WYLIE. Thank you very much.

Mr. LYNGH. If I could just add to that, Mr. Wylie, I would like to see Mr. Stockman sign off on that which he hasn't yet done.

Mr. HALL. I will recognize Mr. John Paul Hammerschmidt, a member of this committee and the ranking minority member of the Veterans' Committee.

The gentleman from Arkansas is recognized.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

I am pleased that I got here in time to hear that last colloquy between Mr. Lyngh and Mr. Wylie and Miss Starbuck. I know that we have to be ever vigilant, and I would like to see Dave Stockman sign off on that, too.

But it is my feeling that the VA and this committee and the Appropriations Committee will prevail. And you may be aware that Chairman Montgomery and myself wrote the chairman and ranking member of the Appropriations Committee expressing clearly that we did have an agreement with OMB, of course as well as with the White House, on not going back to those March figures, on using Gramm-Latta figures.

I feel we will prevail, but I think you have to make your case which you have today, at every opportunity you get, and I know that the chairman of this subcommittee, Sam Hall, is going to be more vigilant than anybody else on these figures. And I am going to follow his advice and leadership.

But I think it is very wise that we make a clear record here today. We know how OMB is. They look at figures and they try to cut the best deal they can, but we look at people and veterans, and I don't mean that they are callous or nonprotective, but they have to deal with the figures of the total Government, and it is up to us to protect the rights and benefits of the veterans, and I think that is what these hearings are about today.

Thank you, Mr. Chairman.

Mr. LYNGH. If I could offer an observation, Mr. Chairman, in response to Mr. Hammerschmidt's comment, might I say we do have a copy. We were favored with a copy, the letter that yourself and the chairman submitted, for which we are most grateful, and might I just make the observation, speaking for the American Legion, that the only thing that gives us any measure of confidence in the adequacy of funding for fiscal year 1982 for the Veterans' Administration is the active interest that this committee is taking

in this whole matter, which we think is crucial at this point, and we are most appreciative of it.

Mr. HALL. Thank you, Mr. Lyngh and Mr. Egan. We appreciate your testimony.

Mr. LYNGH. Thank you.

Mr. HALL. We next have Mr. Philip Mayo, special assistant, national legislative service of the VFW.

Mr. Mayo.

STATEMENT OF PHILIP R. MAYO, SPECIAL ASSISTANT, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. MAYO. Mr. Chairman, I would like to thank you for the privilege of presenting to this distinguished subcommittee the views of the Veterans of Foreign Wars on matters relating to the compensation programs administered by the Veterans' Administration.

First of all, we would like to commend this subcommittee and the full committee for advancing what are now Public Law 97-37, regarding matters relating to our former prisoners of war, and for what is now Public Law 97-66 the Veterans' Disability Compensation, Housing and Memorial Benefits Amendments of 1981.

That measure contains a much-needed compensation and DIC payments increase, along with other provisions which we believe affect compensable veterans and their dependents in a positive fashion, both now and in future years.

It is gratifying to us that Congress, under the prudent and aggressive leadership of this subcommittee and the full Veterans' Affairs Committee has reaffirmed its support of veterans' programs.

Keeping in mind the current budget constraints and keeping Federal costs down, we believe that continuing pressure will be applied on the Department of Veterans' Benefits to reduce their level of claims-servicing personnel. While such reductions may appear fiscally prudent when staffing levels for that Department are reviewed, we respectfully submit that such may not be the case.

Information available to us indicates that the various States, like the Federal Government, are facing fiscal problems that may require reductions in staffing in their Departments of Veterans' Affairs and may cause, as well, reductions in the number of county service officers. It is our view that such reductions should not occur.

As you know, these State-funded offices provide experienced counseling to veterans in claims actions for compensation and other veterans benefits, as well as providing needed assistance in VA hospitals.

A reduction in this pool of experienced assistance to veterans and the VA, if such should take place, will cause increased work load burdens upon the VA, and the challenges facing that agency in this connection were detailed extensively before this subcommittee in our statement on this subject on May 18.

It is our view, Mr. Chairman, that claims for compensable disabilities are effectively denied if informed decisions concerning

personnel levels within the VA are not made, and we urge this subcommittee to continue to exert its forceful leadership in assuring that the decisions relating to those levels are made on such a basis.

In addition, Mr. Chairman, it is our belief that the passage of legislation to protect compensable disability ratings after 10 years will provide benefits to both our veterans and the VA.

It is our experience—the experience of our service officers in the field who deal with these matters—that most compensable disabilities stabilize within a 10-year period and further examinations to substantiate such cases after the expiration of 10 years divert much-needed resources from areas that need attention in the VA, in both the Departments of Veterans' Benefits and Medicine and Surgery.

Simply stated, to make such a change in law, in our view, provides in these times of fiscal restraint, an additional cost-savings mechanism as well as sparing veterans the continued trauma of undergoing time-consuming physical examinations.

Again, Mr. Chairman, we commend you and the subcommittee for your exemplary and sensitive leadership in matters relating to the well-being of our Nation's veterans, and I would be happy to respond to questions you may have at this time.

Mr. HALL. Thank you, Mr. Mayo.

[The prepared statement of Philip R. Mayo appears on p. 68.]

Mr. HALL. You state that, on page 3, "* * * in times of fiscal restraint, an additional cost-savings mechanism as well as sparing veterans the continued trauma of undergoing further time-consuming examinations."

Would you elaborate on that, please, as to what your position is?

Mr. MAYO. In order to not be reduced on their disability claim veterans are occasionally required to undertake physical examinations over the period of 20 years. We believe that if the 10-year protected period is implemented that it will save the veterans the trauma of undergoing this. They are very uncertain and become very upset about it. This has been the experience of our service personnel in the field.

Mr. HALL. Are you stating that once a veteran has received a disability rating he should not be required to go back for further evaluation in the future?

Mr. MAYO. No, sir; I am not. I am saying our experience has been that after 10 years very few are changed.

Mr. HALL. You take the position that after 10 years their position is protected from that point on?

Mr. MAYO. Yes.

Most of the changes that occur in disability compensation ratings occur within the first 10 years after the determination.

Mr. HALL. Well, if they had to take an examination, not every 6 or 8 months, but every 18 months to 2 years, why would that be such a charge on those veterans to do that?

Mr. MAYO. They are concerned that their rating may be reduced.

Mr. HALL. Well, would it be possible that their condition may have improved?

Mr. MAYO. Yes, sir.

Mr. HALL. Which would give cause to have that rating reduced.

Mr. MAYO. It may be, yes.

Mr. HALL. I am not taking issue, it always bothers me when a person who has been found to be disabled or a person who, and as I said earlier, I equate this to trials or lawsuits, with which I have had some experience, when a person does not wish to be examined it always gave rise, to my thinking, that maybe he is not as disabled as he indicates that he may be. That is not always the case, I understand. But to me it would be well for a veteran who has been found to be disabled to undergo an examination at some reasonable period of time to see whether or not he is worse off or better off than he was 10 years before, or five years before.

Mr. MAYO. I understand precisely what you are saying, sir. It is our point that the examinations that veterans have taken, after the first 10 years of their disability, have in most cases not resulted in any reduction or any change. It is merely adding that additionals workload that the VA has to accomplish in both the Department of Medicine and Surgery, and the Department of Veterans' Benefits.

As for their uncertainty, I would never feel comfortable if I were audited by the IRS, no matter who I was. I would feel apprehension whether I had done something wrong or not, in further explanation of their feeling ill at ease.

Mr. HALL. Thank you. Thank you very much for your very fine testimony, and I yield to Mr. Wylie, the gentleman from Ohio.

Mr. WYLIE. Mr. Chairman, I don't have any questions at this time.

Mr. Mayo, I appreciate your excellent testimony, it is fairly straightforward.

Some of the questions I have had of an earlier witness that I think you have heard, and we have gone into those and gotten that information for the record.

Thank you very much.

Mr. MAYO. Thank you, sir.

Mr. HALL. The gentleman from Arkansas, Mr. Hammerschmidt.

Mr. HAMMERSCHMIDT. Mr. Chairman, other than to thank Mr. Mayo for his fine testimony, I have no questions.

Mr. HALL. Next is Mr. Gordon Mansfield, associate legislative director for the Paralyzed Veterans of America.

You may proceed.

STATEMENT OF GORDON H. MANSFIELD, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. MANSFIELD. Thank you, Mr. Chairman.

For the record I am Gordon H. Mansfield, associate legislative director of Paralyzed Veterans of America. I would request that my complete statement be entered in the record.[1]

Mr. Chairman and members of the subcommittee, PVA's legislative goal is that compensation benefits should be increased to at least keep abreast of inflation. The recently enacted Public Law 97-66 does much to achieve this goal, and we wish to thank you and the members of the full committee for your efforts at securing this legislation which provides for the needs of veterans who have

[1] See p. 75.

experienced loss of earning capacity through service to their country.

PVA does feel that this is an appropriate time to address its concerns on compensation and on dependency and indemnity compensation. The full House has only recently discussed questions of national economic policy. Reports indicate an increase in inflation rates and the possibility of a harmful recession.

With that in mind I would like to highlight certain aspects of the complete statement.

The last two Congresses have enacted legislation which set varying rates for different groups of veterans for compensation benefits. PVA is concerned that such a precedent will be carried into other areas of veterans' programs, especially by those who would further restrict veterans' benefits under the guise of fiscal restraint.

There is a concern, in the fragmentation into different groups of veterans.

Also PVA strongly opposes any offset of compensation benefits, such as recent proposals regarding social security payments. Compensation benefits, as has been discussed earlier today, were and continue to provide for a specific purpose, the loss of earning capacity of the disabled veterans.

One final concern is the presumptive period for certain neurological disorders.

PVA is grateful to Members of Congress who have introduced legislation to recognize a presumptive period for service-connection for veterans who have experienced certain neurological disorders.

We would ask that the existing 7-year presumption for multiple sclerosis be extended to a small number of veterans who have experienced syringomyelia, amyotrophic lateral sclerosis, transverse myelitis, or pernicious anemia. These diseases are of unusual origin, usually resulting in paralysis, perhaps caused by trauma or exposure to toxic substances. PVA would request this subcommittee to closely examine the needs of veterans with these unusual and very destructive neurological conditions.

In regard to dependency and indemnity compensation, PVA wishes to express its gratitude for recent efforts to improve this program.

Unfortunately, however, surviving spouses who have spent their time caring for disabled veterans still receive DIC benefits based upon the veteran's military pay grade and not his degree of disability.

The spouse often foregoes opportunities for education, work experience, and other factors of employability to care for the veteran. These factors in turn work against the spouse in any attempts to enter the job market.

This is especially true for surviving spouses of veterans who served in the lower military pay grades. PVA once again, as we have done previously, requests that legislation be proposed to set the DIC rate at a minimum of 75 percent of basic monthly compensation at the time the veteran dies. We feel this is a reasonable request for spouses who have served the Nation by helping care for service-connected disabled veterans.

One final comment, with regard to this program and with regard to some of the discussions that have taken place here earlier. PVA,

Mr. Chairman and members, is concerned not only about fiscal year 1982 but the implications that OMB has raised for, I guess what you call, the outyears. We are very distressed to see an agreement that the Congress supposedly had made now going into negotiations.

I would submit that Mr. Stockman's position on those negotiations is that he wants a minimum of 100 percent of what he wants, and if he can get more he will take 200 percent.

Thank you, Mr. Chairman. That ends my statement, and I will answer any questions that I can.

Mr. HALL. Thank you very much, Mr. Mansfield.

I will recognize the gentleman from Ohio, Mr. Wylie.

Mr. WYLIE. I have had two or three inquiries on the presumption of multiple sclerosis as being service-connected if it is contracted within 7 years after the veteran leaves the service.

Are there bills in on that, do you know?

I could look this up, I suppose.

Mr. MANSFIELD. That is the current title 38 status, and PVA is requesting that that 7-year presumption be extended to these other neurological disorders.

Mr. WYLIE. Under the present law if a person contracts multiple sclerosis within 7 years after leaving the service it is presumed to be service connected?

Mr. MANSFIELD. Yes, sir.

Mr. WYLIE. And what you are saying is that that should apply to any neurological disorder?

Mr. MANSFIELD. Well not any, sir. We indicated four specific ones that do in the end result cause paralysis, either complete or partial.

Also with regard to the, even the 7-year presumptive period, there are cases I have seen that have gone before the Board of Veterans Appeals, where the discovery has taken place after the 7-year period, but they have been able to prove that there were signs existing during the 7-year period.

Mr. WYLIE. I got it.

Thank you very much.

Mr. HALL. One of those that you mentioned is pernicious anemia.

Mr. MANSFIELD. Yes, sir.

Mr. HALL. I am asking the question for my own information, does that disease lead to a paralysis?

Mr. MANSFIELD. In certain cases, sir. What we are dealing with here is with neurological disorders. Some of them affect the, I guess you might say, below the neck, the spinal cord, as it comes out of the brain, in certain instances you have the, I guess you'd call it, the supply to the brain cells itself, with the blood flowing through capillaries or whatever, in the brain cells themselves, can affect certain areas, including motor areas, or other areas.

Mr. HALL. I knew about the others such as lateral sclerosis and transverse myelitis, but pernicious anemia is one I didn't know would cause paralysis.

Thank you very much for your testimony. We appreciate your being here.

Mr. MANSFIELD. Thank you very much, Mr. Chairman.

Mr. HALL. Mrs. Rosemary Locke, legislative chairman of the National Military Wives Association.

Mrs. Locke.

You may proceed.

STATEMENT OF ROSEMARY LOCKE, LEGISLATIVE CHAIRMAN, NATIONAL MILITARY WIVES ASSOCIATION, INC.

Mrs. LOCKE. Thank you.

Mr. Chairman and members of the committee, the National Military Wives Association thanks you for this opportunity to express our views on dependency and indemnity compensation and to ask for your continued support.

Like any program of its size DIC has areas that need improvement. However, in previous congressional oversight hearings suggestions have been made which, if implemented, would virtually destroy the program Congress designed, a program for which military families are grateful.

NMWA's statement will respond to some of those suggested changes.

Many of our members can recall a time when there was no DIC, when families of active-duty servicemen had very little compensation in the event of death or where there were great disparities between the compensation given survivors of Regulars or Reserves.

Congress 1957 enactment of DIC brought some means of security to all widows and dependent children of military members who died of service-connected causes. NMWA asks that you continue to make DIC applicable to all.

Every active-duty service member, whether officer or enlisted, first-termer or careerist, should be assured that should he die while serving his country his dependents will have the protection of DIC.

Obviously, there is no way that survivors can be completely compensated for the loss of a loved one, the loss of the family provider. However, the compensation given that family should be in proportion to the loss. Their standard of living should not have to drop drastically. NMWA is totally opposed to the concept that the survivors should have to prove their "need" for the benefit.

Military service is a unique way of life, not just a job. It requires a 24-hour-a-day commitment to serve when called. Families of service members are required to share in that commitment and the sacrifices required.

Jean Hilsman, NMWA president, and I recently returned from a 2-day visit with families of the 82d Airborne at Fort Bragg. They spoke of their pride in being part of this elite unit which is ready to respond to troubled areas on short notice. They also spoke of the stress this readiness places on families.

Recently two unit officers, in their mid-forties, died of heart attacks during physical training. In another unit a young soldier was killed when his jeep overturned. All of these men left behind wives and young children.

I mention this to point out that death, injury, or shortened life are very much a part of military life in peacetime as well as war. In each situation, war or peace, the service member was performing service or was on call. In each case his survivors need the protection afforded by DIC.

Congress should review this program which is so important to military survivors to be sure that the compensation given is fair and at least equal to that given other Federal survivors.

NMWA thanks you for this year's cost-of-living raise, however, we would recommend that a yearly cost-of-living adjustment be considered. Many older widows have exhausted other financial resources and are primarily dependent on DIC and social security. For them the yearly need to seek a cost-of-living adjustment is a source of real concern, inflation having increased their housing and medical cost dramatically.

Finally, although it may seem a small matter, there is the point of remarriage after age 60. Many DIC widows live lonely lives because they are unable to remarry without the loss of DIC, or they are forced to accommodate to new life-styles which may be morally offensive to them and their children. We ask, again, that you favorably consider legislation which would allow their benefits to continue upon remarriage.

Your support of a strong dependency and indemnity compensation program will also help in the retention of a career force. It will give the additional assurance to service members and their families that you recognize their families' needs and have provided a fair system they can count on.

Thank you for the opportunity to express our views on a benefit which is of such importance to wives and widows of the uniformed services.

Mr. HALL. Thank you very much, Mrs. Locke, for your very short testimony, and to the point. It brings out some very good issues.

One thing that you mentioned, that every active-duty service member, whether officer or enlisted, first-termer or career, should be assured that should he die while serving his country his dependents will have the protection of the DIC. I think that is true now.

Mrs. LOCKE. Yes, it is, sir.

Mr. HALL. I think it is a good program, and I think it should never in any way be altered or amended in any way, and we appreciate your position on that.

The gentleman from Ohio, Mr. Wylie.

Mr. WYLIE. I just want to thank you for your testimony.

I must say that your statement in the fifth paragraph, page 2, about being able to draw, after remarriage, after age 62. Or age 60, I mean. It has some appeal to me.

I am sure you don't have with you a guesstimate or figure as to how many widows that might affect.

I don't know if there would be any way of getting at that. There might be. We might see if there is some figure we could come up with as to a cost estimate on that.

Mrs. LOCKE. I am sorry. I don't have any figures, but it is a source of concern to some widows at that age.

Mr. WYLIE. Yes.

It has been brought up before this morning.

Thank you very much, we appreciate your testimony.

Mr. HALL. Thank you very much, Mrs. Locke.

Mrs. Jean Arthurs, president, National Association of Military Widows.

Mrs. Arthurs, you may proceed.

Mrs. ARTHURS. Thank you.

STATEMENT OF JEAN ARTHURS, PRESIDENT, NATIONAL ASSOCIATION OF MILITARY WIDOWS

Mrs. ARTHURS. I am Jean Arthurs, president of the National Association of Military Widows.

We are grateful for the privilege of appearing before this committee today to present our views on dependency and indemnity compensation for the surviving spouses who will be affected by this legislation.

To give you a short preview of the DIC widow, dependency, and indemnity compensation is based upon the government's obligation to provide the surviving spouse a support substitution in exchange for the serviceman giving his life for his country.

This means the serviceman was killed on active duty or died of service-connected causes, which indicates the widow coped with the sudden tragic loss of the breadwinner or had been caring for a disabled veteran until his death—and now has been trying to exist on about one-fourth of the basic income.

Monetarily in most active-duty deceased cases it means that the DIC widow is the survivor of a veteran with a shortened lifespan who was unable to accumulate an estate sufficient to provide for his survivors.

Often the surviving spouse of a severely disabled veteran has provided extensive care because of the veteran's disability. The cost of the extensive care often exceeded the allowance for service-connected disability which led to many problems, financial as well as psychological.

We have many histories such as the amputee who also suffered a personality change. With the burden of care of the double amputee plus the mental harassment which was so great, the widow developed psoriasis which encompasses her entire body today, from the loss of her hair to the need to wear slippers instead of shoes.

At these hearings I have often heard the state of the veteran, but there has not been a great deal of consideration for the families of these veterans and I thought maybe it would be well to tell you about one.

They, too, have served our country in endless ways and should be credited accordingly.

The primary legislative goal of the National Association of Military Widows is to seek equity among the Federal survivor benefit programs. By Federal we mean the military and civil service, who share the same paymaster and should receive the same equal benefits.

The military survivor benefit plan was enacted in 1972 and it allows widows to remarry at age 60 and retain the SBP annuity. The FECA, the RSFPP, and the social security allow remarriage as a means of permitting the older surviving spouses to live out their lives in comfort and dignity—and legally married, which is very important to their moral standards.

The DIC is the only category of Federal spouses in which they are deprived of benefits if they remarry after age 60. In the interest of equity for all this oversight should be corrected now.

Statistics show that 79 percent of these survivors are widowed over age 40; 56 percent of them are over age 50, and many are much older and will never have a chance to remarry.

In reality this involves a token number of widows, and at least it will allow them to escape the loneliness of widowhood and live a morally respected life. The cost factor is negligible as so few could find remarriage.

You asked about how many. It might be, we have figures that would say 14 in 10,000 widows over the age of 60 might possibly remarry, sir.

Mr. WYLIE. 10,000 widows?

Mrs. ARTHURS. Yes; 14 in 10,000 widows.

Surely this Congress has the compassion to pass Representative Whitehurst's bill, H.R. 644, which allows the DIC widow, age 60 and over, to remarry and retain her DIC annuity. It would be a step toward making the DIC program equitable with the other government programs.

It is said that the veterans' programs are to assist the citizen soldier who serves his country in time of peril. If this citizen soldier loses his life serving his country, the DIC benefit is designed to partially fill this void for the widow.

With the scenario it takes to become a DIC widow, and they surely are survivors in the true sense of the word, it is difficult to see how they can survive on a "partially filled void" as indicated.

Similar cases such as when civil servants might accidentally meet their demise in a perilous situation, such as a loss of the submarine *Thresher* and such as that, under the FECA they receive 55-percent benefit, plus 1 year's pay; the Foreign Service widow receives 75-percent benefit and 1 year's pay plus a few other fringes.

Now this can be adapted in various ways, and I just gave you one ruling on that.

But which are DIC widows only partially endowed, at not more than 40 percent?

DIC is unique in another way. It is the only benefit program wherein the longer the serviceman serves and the higher in rate or rank he attained, the less percentage in proportion the widow receives. We really feel this is an unfair equation.

Being "partially" benefited means that this DIC widow who has so gallantly moved from pillar to post, made do with an inadequate income, tried to educate children properly, cared for an ill husband, is often faced with not only the bereavement but the financial inability to cope with not more than a 40-percent income. If she has a house she can't afford to live in it. The burdens are unending.

"Partially" benefited means the DIC widow must go to work regardless of circumstances. Low pay in the military precludes the establishment of much of a savings account. Wives of military personnel have little opportunity to establish a career for themselves so they are unable to build up a retirement program for themselves. Generally, their age and lack of skills make finding a job almost impossible in this youth-oriented society of ours.

Widows of servicemen who served in the First and Second World Wars are now in their sixties, seventies, and eighties, and they are

a sad group. They are facing the hardships of loneliness, of old age, the inability to cope with the spiraling inflation and the fears and uncertainties of a spartan existence.

Condo conversions continue to fill my mail with horror stories. Really, this is a very serious situation as far as the housing of people is concerned.

It is our plea today that this Congress see fit to correct the inequities of the DIC program and place it on equal footing with the other Federal benefit programs.

When Abraham Lincoln stated in his address to the Nation that this country would care for the widow and the orphan, surely he meant on an equitable basis for all.

Thank you so much for allowing me to testify today. I will be glad to answer any of your questions.

[The prepared statement of Mrs. Arthurs appears on p. 82.]

Mr. HALL. Thank you, Mrs. Arthurs.

I appreciate everything you had to say.

I do have some question, though, that a partially benefited income, if you took it to fruition, you would have an intolerable cost attached to it, as I see it.

Now we have spent a lot of money foolishly in this Nation; I know it as you do, too. What Lincoln said we all agree with. But it has been my experience, when you speak of the widows and servicemen in the First and Second World War having these terrible hardships, I get mail from just about every kind and character of human being, and I have had very, very little corespondence from the widows of veterans of the Second World War who are facing the condition that you indicate here now.

I am sure that I have received some, but I don't find all of the horror in my mail that I am sure you are getting from people throughout the country.

Certainly this committee looks upon what you say with every bit of the feeling and compassion, but certainly at some point in time it is a question of being able to take a bill and put through since we have 435 people who vote. It is a question of numbers.

And I dare say that in some of the other areas that we have heard here today, dealing with additional benefits I think there is maybe a time when you could be more, when we could be more persuasive to the other members in getting some of these things across; the times we are in right now, I don't think that we would have that much success, not that that makes it right. That is just a matter of fact representing the tenor of the times.

I appreciate your statement. I am not in disagreement with anything you say. I am just concerned about trying to go forward at this time 100 percent and accomplishing what you are legitimately seeking. Well, I just don't——

Mrs. ARTHURS. Well, Mr. Hall, if I may respond. I have been coming up here for 7 years, and I find that we go step by step, widows. Widows are on the low end of the totem pole, you know. It takes a great deal of effort, believe me, in the Armed Services Committee or any of the Veterans' Committees.

They have had hearings on, in the Senate Veterans' Committee on remarriage after 60, and it was the very service groups, most of them said that there was no money for that, even though it was

such a small matter as about 14 women in 10,000 that could find remarriage.

My point is making these things equitable. Just passing the bill would help, you know, and as far as these women getting remarried, who is kidding who? A woman over 60 remarrying? There just aren't that many, and I am really discouraged to think that the people don't have greater foresight that they couldn't at least pass the bill and they could bring out the equity. Do you understand what I mean?

Mr. HALL. I understand.

Mrs. ARTHURS. Now the other thing about your mail, receiving letters from widows. Sir, I have worked with widows all these years, and I will be the first to admit they are their own worst enemy. They lack confidence for the most part, or you will find some that will just bore you to death and call up all the Congressmen.

I really discourage their calling you people on the telephone. I do suggest they write postcards if they can. Then they will call me up and they will say, do you think it's all right if I can put this on a postcard, and you tell me what to say.

I say, I am not going to tell you what to say on that postcard. If you don't know what your situation is then don't ask me to tell you. But they should be writing cards, but they have a fear of this.

People, women as they get older, sir, they lack confidence, and when it comes to writing to the heeler of the people out in the boondocks, I get the craziest correspondence from people out in the, well, what I, maybe you don't call them boondocks, but out in the other areas, and they really don't know quite how to approach the thing. They need somebody to take care of them.

You know, you've had a husband for so many years, and then all of a sudden he is gone, and it takes a pretty strong person to pick himself up by his bootstraps and carry on, you know.

Mr. HALL. You are very convincing.

I yield to Mr. Wylie, the gentleman from Ohio.

Mr. WYLIE. You didn't mean Columbus, Ohio, when you said boondocks, did you?

I respectfully disagree, though, about people who get around 60 or 62 or 65 not being willing to write. When there was some talk about reducing the benefits of social security from 80 percent to 55 percent for early retirement at age 62 I got about 3,000 letters in less than 3 weeks in protest, and I know most of them came from people over age 60, and they weren't all men. So I think if they get worked up enough that they will write.

You say there are 14 widows out of every 10,000 widows, 10,000 World War II widows?

Mrs. ARTHURS. No, that is just a basis. I have a study on aging that I am sorry I don't have with me today, but on this aging study they outline people, and, for instance, men, these veterans groups that were against this remarriage, you know those men go out and marry young women. They don't marry women in their own age bracket.

Mr. WYLIE. They do? I see.

Mrs. ARTHURS. You know, and that really leaves these widows out here on a limb. But if they just would it would help tremendously.

Mr. WYLIE. Well, when you say 14 out of 10,000, we have to start out with how many widows would there be in this category who survive servicemen who are either killed in active duty or died of service-connected causes, and then I think we will have——

Mrs. ARTHURS. Sir, this President's Committee on the Aging, that is not a military organization. And that is just a general statement that they made that came out of their statistics.

Mr. WYLIE. OK. We will try to find out how many that actually translates into.

Let me ask this, just for my own, I should know this, but let us assume, for example, that a woman is widowed, she was married say when she was 24, and at age 40 her husband passes away of a service-connected disability and she is 40, also. She remarries at age 45. At age 50 she is divorced. Is she eligible to go back on DIC at that point?

Mrs. ARTHURS. Yes, sir, if she is receiving DIC.

Mr. WYLIE. OK. This is just for information purposes only, but there is no implication intended that she should——

Mrs. ARTHURS. You know when you talk about the equity of DIC I would like to bring out that the Congress has just passed the bill reopening the survivor benefit bill for retired people, and while we are talking about age I do think it is necessary to tell you that you know the majority of those men, it might seem like an inexpensive bill at this time, but with all the young women they are marrying that bill is going to escalate and be very expensive before they get through with this.

Mr. WYLIE. Thanks very much for your excellent testimony, and I compliment you for taking the time out to appear here this morning.

Mrs. ARTHURS. Thank you.

Mr. HALL. Thank you very much.

We will next hear from Mr. Charles Joeckel, assistant national legislative director for the Disabled American Veterans, and he is accompanied by Mr. Arthur Wilson, national service director and Mr. Jesse Brown, chief of claims.

Glad to have you.

STATEMENT OF CHARLES JOECKEL, JR., ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS; ACCOMPANIED BY ARTHUR H. WILSON, NATIONAL SERVICE DIRECTOR; AND JESSE BROWN, CHIEF OF CLAIMS

Mr. JOECKEL. Good morning, Mr. Chairman.

It is a pleasure to be here.

With your permission I would like to submit the full text of my testimony and summarize for the record.

Mr. HALL. Without objection, it will be admitted.[1]

Mr. JOECKEL. Let me begin, Mr. Chairman, by thanking the subcommittee and the full committee for their efforts with respect to Public Law 97-66, particularly that provision which will allow congressional oversight of any reorganization plan.

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[1] See p. 86.

In my testimony I refer fairly extensively to the budget, and I think that that subject has been covered in sufficient detail. I am pleased to note that because of your badgering, I guess of the VA, we have found out that the employment losses in DVB will be minimal. We will be a little more reassured about the budget when it finally passes the Congress.

I would like to pay particular attention today to the VA unemployability review. It is one of the topics of today's discussion. Not too much time has been spent on it.

Our organization, which is made up of service-connected disabled veterans, is naturally very interested in protecting the integrity of VA programs. We support the VA's program of ongoing review and evaluation, particularly to protect the integrity of benefits provided to service-connected disabled veterans.

Our concern regarding the unemployability review centers around the point where the VA has gone beyond protecting program integrity and enters an area where the purpose of the review is aimed at tightening up on the program.

Since the program review began the VA has requested copies of individual unemployability ratings which were granted in the field. We know that they have considered plans to review cases of veterans over the age of 60, have considered plans to conduct a second review of those cases involving neuropsychiatric disabilities, and they have a new proposal for a DVB circular.

So far the review, in our opinion, has been a successful one, reviewing approximately 68,000 claims, setting employment controls on 13.2 percent of those which had been lost, reducing about 5 percent of the claims reviewed, which can be extrapolated to mean about 95 percent of those reviews were correctly evaluated.

What we have become alarmed over is the VA's latest proposal for a circular which, in our opinion, is designed more or less to intimidate local rating boards. As we see it the proposed circular provides for examples in claims work to be used somewhat as guidelines to the board for evaluating individual unemployability claims. The examples, in our opinion, are weak, and they fail to elaborate on certain pertinent facts, and it deals with a judgment, the independent judgment of the rating board member.

We don't think that this is a very good tool to use and we would think it would be more or less used as a device to intimidate their professional and independent judgment.

When you look at all of the things that have been done since the code 18 review began last year it would look, considered independently, as routine business by the VA, but when we put the things together it appears to us that the VA has set on a deliberate course to tighten up on the program. We note that in the VA's testimony today they plan to call in not only those cases that were granted but those that were denied.

In our view we don't quite know what the intent of further review is, No. 1; No. 2, we don't know what they will learn from denied cases, although it would seem to show a little more fairness on the part of the VA.

As we see it, we don't think that the Veterans' Administration should be calling claims into central office at all. As I stated

earlier, the program review has been successful and most of the cases reviewed so far were found to be in order.

Finally, since everyone has had an opportunity today to comment on an inequity in VA programs, I would like to take my shot.

There is a small inequity in Public Law 95-479 regarding DIC claims. The General Counsel has recently rendered an opinion that if the widow of a veteran who was rated totally disabled for 10 or more years, files a claim for DIC and the veteran's original claim is found to be in error—for example, had he been rated 9 years, 360 days at the 100-percent rate—then DIC could not be extended in that case.

Current law requires that they be rated 10 years or more at the 100-percent evaluation, and then DIC payments are made.

We think this was not the intent of Congress—to deny the widow of a veteran who had a rating for such a long period of time and simply because of VA error in a rating, she would not be entitled to this benefit. We ask that that law be amended to read "if the veteran were in receipt of or entitled to receive the 100-percent evaluation for 10 or more years."

That concludes my oral testimony at this time.

Mr. HALL. Your last statement, would you go through that again. Where the person died at 9 years and what——

Mr. JOECKEL. Nine years, three hundred and sixty-one days is the case that we have. Under law he would have to be rated 10 years. The widow that we are referring to, the veteran was rated for 9 years 361 days at 100 percent. Evidence was found in the record to show that he should have been rated as totally disabled for I think maybe 10 years and 6 months, or so many days.

The decision of the VA General Counsel, and ultimately the decision of the Board of Veterans Appeals was that this widow would not be eligible for DIC, simply because the law states currently that the veteran must be in receipt of the payment for the 100 percent level for the 10-year period. And in fact, he was not.

Mr. HALL. If that veteran had been examined at some time prior to his death, would there not have been a probability as opposed to a possibility that that situation could have been corrected so that at his death this problem would not have occurred?

Mr. JOECKEL. Well, the statistics show that he had about a 50-50 chance.

In my statement I submit some statistics regarding claims reviewed by the Board of Veterans Appeals for error only, and in about, I think we found about 50, let me see, how many cases was that?

Mr. HALL. Is that 95 percent of nearly 68,000?

Mr. JOECKEL. Of the cases that were reviewed by BVA solely for error in a rating about 50 percent of those claims were overturned. I think there were 91 cases. So it is not necessarily true that if you got a routine exam or came through the VA for some benefit or another that automatically the error would have been found.

Also, Mr. Chairman, at this point I would like to submit for the record some things that are pertinent to the testimony today.

It is the March 24, 1981, General Counsel's opinion regarding the DIC inequity I pointed out, and correspondence between our orga-

nization and the Veterans' Administration regarding the individual unemployability review.

Mr. HALL. Without objection, it will be made a part of the record.[1]

I want to ask you something that you haven't made any comment about, no one has.

You speak here of final action on these matters being taken by the Board of Veterans Appeals. What is the position that your organization takes on review of these matters in the courts?

Mr. JOECKEL. Well, we have two positions. First, we support a limited form of judicial review, which is a court, we establish a court of veterans appeals, and we have a position also to limit the liberalization of attorney fee restrictions to where the attorney would be involved in the cases most at the BVA level or at the notice-of-disagreement level, then perhaps that is where the attorney fee should be liberalized. But below that we don't see the inequity or equity, I suppose, of paying an attorney for having to file the right form in a claim.

At the notice-of-disagreement level then certainly he is beginning to earn his money, and he should be reimbursed accordingly.

Now our judicial review resolution states that we support a court of veterans appeals but not opening it up to——

Mr. HALL. Not a de novo appeal, just a limited review.

Mr. JOECKEL. It would be restricted, even the review by the court of veterans appeal would be restricted.

Mr. HALL. Do you feel that without the judicial review that the Board of Veterans Appeals usually reaches a fair and equitable judgment?

Mr. JOECKEL. Yes, we do. I don't think there is any question about that. And there will always be, I am sure, a certain number of claims where ONC believes "gee, if there were another step I could win."

Mr. HALL. Yes.

Thank you very much for your testimony. We always appreciate your being here and listening to what you have to say.

Mr. JOECKEL. Thank you, Mr. Hall.

Mr. HALL. Our last statement today is World War I, and I am not certain who will make this presentation. Ms. Parkhurst.

You may proceed.

Ms. PARKHURST. Thank you.

STATEMENT OF MURIEL PARKHURST, ADMINISTRATION ASSISTANT, VETERANS OF WORLD WAR I

Ms. PARKHURST. Mr. Chairman, and subcommittee members, my name is Muriel Sue Parkhurst. I am National Commander Winston Roche's administrative aide, here to present this morning the testimony prepared by our legislative director who resides in Michigan.

Commander Roche, a resident of California, is currently traveling to cities and towns where no other national commander from our organization has ever visited and is unable to be here this morning.

[Ms. Parkhurst reading:]

Mr. Chairman and subcommittee members, greetings from a former unsuccessful candidate for Congress back in 1962.

[1] See p. 98.

My name is Don R. Pears. I am the new director of the national legislative committee of the Veterans of World War I of the U.S.A., Inc. Not only am I obviously a veteran of World War I, but I also served as an officer during World War II. In World War I, I enlisted at age 18 and went to France with the first 100,000 in 1917.

I also served 18 years in the Michigan House of Representatives and was speaker of the house during four of those years. So I am personally acquainted with your committee and committee member, the Honorable Mark Siljander.

Today your honorable committee is, I understand, among other items, scheduled to conduct this hearing on the impact of proposed fiscal year 1982 budget and staffing cuts for Department of Veterans Benefits.

Permit me to say, if you will, that even though I have not had an opportunity to be domiciled in Washington, D.C., in the immediate past I do feel some familiarity, not only with your interest in the matter but certainly the veterans on the home front.

As a life-member of The American Legion and the Veterans of Foreign Wars and a long-time member of AMVETS I make this statement with at least some knowhow and some understanding of veterans' problems and needs.

Mr. Chairman, the millions of veterans in these United States believe in you and your committee. They also believe in fair play and justice. Likewise, a majority of the veteran organizations are on record in support of the much-needed pension for the World War I veterans. But that proposal is not before your committee today.

I think it goes without saying that veterans by and large accept the fact that to preserve and protect the economy of this great Nation some budget and staffing cuts are necessary in practically every segment of Federal Government.

But when it comes to the veterans' budget and staffing cuts I hope you will remember that those cuts should be made and must be made judiciously. America owes so much to its veterans.

I submit to you that they must be given every reasonable doubt when their needs are considered.

I hope this committee will usurp its very powerful influence in reducing or abolishing those veteran budget and staffing cuts which presently are proposed.

Thank you for your attention and indulgence.

Mr. PARKHURST. Signed by Don R. Pears, national legislative director.

Mr. HALL. Thank you, Ms. Parkhurst. We appreciate the statement of Mr. Pears. He and you may rest assured that we will be looking out after the interests of the veterans and, hopefully, anything that is done with reference to budget cuts will be in a judicious manner.

Ms. PARKHURST. OK.

Mr. HALL. Thank you very much.

I would like to thank all of you for being here today and appreciate everything you had to say. It was all right on target, and this committee will take all of it under consideration.

The subcommittee stands adjourned.

[Whereupon, at 11:27 a.m., the subcommittee was adjourned.]

APPENDIX

Statement of Dorothy L. Starbuck
Before Subcommittee on Compensation, Pension
and Insurance
Committee on Veterans' Affairs
House of Representatives
October 27, 1981

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you to discuss several issues. I am accompanied today by:

o Mr. Max Woodall, Director, Compensation and Pension Service;

o Mr. Herbert Mars, Deputy Director, Compensation and Pension Service; and

o Mr. Norman Paulson, Assistant General Counsel.

You specifically asked that we present our plans for implementation of Public Law No. 97-37 as well as discuss both our review of unemployability cases and the effects of vacancies in key positions. You also asked about the timeliness of examinations and hospital reports, possible payments to deceased beneficiaries, and the likely effects on radiation claims of a recent Federal District Court decision. Additionally, you asked about staffing levels for Fiscal Years 1982 and 1983, and rules regarding salary payments to Rating Board doctors.

Public Law No. 97-37

We are moving rapidly to implement the provisions of the Former Prisoner of War Benefits Act of 1981. Proposed regulations have been drafted and are being prepared for approval by the Administrator. Additionally, instructions on how to implement the law were issued to the regional

offices in September. The provisions of the bill were carefully outlined and explained to ensure that our field personnel know the changes made by this law. We have requested that formal ratings involving former prisoners of war contain all data pertinent to POW status and that a copy of each rating be submitted to Central Office. These ratings will be reviewed and will become the basis for DVB recommendations to the Advisory Committee on Former Prisoners of War. A charter outlining the objectives and scope of the Advisory Committee is being prepared.

An extensive outreach effort is being launched to identify former POW's. We estimate that 43% of the more than 100,000 former POW's who may be eligible for benefits under the act are already on our compensation and pension rolls. We plan to ask the heads of all major service organizations, officials of military units and State directors of veterans' affairs for help in obtaining names and current addresses of the remaining 57%. By November 14, each organization will have received a letter that highlights the features of the new law and that asks their post, chapter, or county service officer to collect locator data on as many former POW's as possible. We expect to receive this information in January 1982.

A pamphlet explaining the provisions of the new law is being prepared for distribution in February 1982 to those identified as former POW's, to former POW groups and to other veterans' service organizations. We also will ask that these veterans and groups pass the information to any former POW's they know. Additionally, VA's Office of Public and Consumer Affairs will assist us in our outreach efforts. Each of our regional offices and medical centers will receive a supply of pamphlets to be provided to all individuals who might be affected by the new law.

POW labels have been placed on claims folders in regional offices and the Records Processing Center. This will be an ongoing process as POW status is identified.

POW indicators have been entered in BIRLS to show POW status and whether the period of internment exceeded 179 days. Based on Public Law No. 97-37, the indicator in BIRLS will be changed by the end of December to show those POW's interned for 30 days or more. We also have requested that a POW indicator be placed in the C&P master record at Hines to allow inquiries regarding POW status to be answered without looking at the claims folder. This action is scheduled to be accomplished by the end of December 1981.

The placement of these POW indicators in our computer systems will provide health care facilities with immediate access to information regarding POW status for a particular veteran.

There are about 40,000 folders located at the Records Processing Center for veterans who were POW's. The majority of these records are inactive. We plan to review them to determine if the veteran is now entitled to benefits under Public Law No. 97-37. During January 1982, personnel in four regional offices will review a 10% random sample of these cases. A decision will then be made on the best way to accomplish the complete review.

The Department of Medicine and Surgery also has taken action to ensure that VA hospital and outpatient clinic personnel are aware of the effect Public Law No. 97-37 has on the programs they administer. The impact of the law was relayed to DM&S officials during conference calls on September 16 and September 18, 1981, and was further emphasized in a presentation to Chiefs of Staff at their September 28, 1981, conference in St. Louis. Lastly, instructions on how to implement the provisions of the law were telegraphed to all DM&S facilities on October 6, 1981.

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Unemployability Review

Both the Committee on Veterans' Affairs and DVB were concerned about various problems in the administration of individual unemployability evaluations, which were brought to our attention through case reviews, advisory opinion requests and ongoing statistical quality reviews. The Committee asked several questions concerning this subject during oversight and legislative hearings in April of last year. In response, the then Administrator stated that we would perform a comprehensive review. That review began in late 1980 and was recently completed.

Fewer than four of every ten cases reviewed required an adjustment, and the majority of those involved an increase in benefits. Specifically, of the 68,035 cases reviewed:

o existing evaluations were confirmed and continued in 42,416 cases (62.3%);

o evaluations for service-connected disabilities were increased to a schedular 100% disability rating in 13,137 cases (19.3%);

o controls for employment were reestablished in 8,981 cases (13.2%); and

o evaluations were reduced and individual unemployability was discontinued in 3,501 cases (5.1%).

The purpose of the review was not to develop amendments to the rules under which veterans receive benefits, but rather to ensure that veterans receiving compensation based on unemployability are entitled to it.

We are continuing our oversight of these cases and have instructed regional office personnel to submit to Central Office copies of all rating decisions that initially grant or deny individual unemployability. This will enable us to measure rating activity improvement in these areas.

Key Positions

Mr. Chairman, I am pleased to be able to tell you that there no longer are vacant key service director positions in DVB Central Office.

In addition to the appointments of Mr. Woodall and Mr. Mars, the Administrator has approved Dr. Stephen Lemons as Director, Vocational Rehabilitation and Counseling Service, and Mr. C. L. (Lew) Dollarhide as Director, Education Service.

We do not believe that vacancies in key DVB positions adversely affected the release of our regulations and guidelines. The vacancies in question were, in effect, "paper vacancies," in that, while the job itself may have lacked an incumbent, the functions of the position were being carried out by an acting director under a delegation of authority from me. Thus, regulations and/or guidelines were processed as they would have been had a director been named.

Examinations and Hospital Reports

The number of examinations and hospital reports pending as of August 31, 1981, has decreased over the same period last year. The overall improvements in turn-around time are slight (they are measured in tenths of a percent), but they are satisfactory.

At the end of August, 28,883 examination requests or hospital reports were outstanding, that is, the examination results or clinical report had not yet been returned to

the requesting adjudication division. Only 2,282 (7.9%) of that number were more than 2 months old, however, and only 29 were more than 6 months old.

While we would prefer to see the turn-around time decrease, we recognize that many factors affect timeliness in this area. Overall, however, we can live with a situation in which less than 8% of our examination/hospital report requests are over 2 months old. We do not consider this to be a particularly troublesome area.

Possible Payments to Deceased Beneficiaries

VA Inspector General personnel began an audit of this area in September. The audit comprises two computer matches. One involves matching C&P master records against a file of Illinois death cases and will be conducted by Inspector General personnel. The second will match C&P master records against a file of death records amassed by ATL, Inc., a private contractor. This match will be conducted by ATL, Inc., which will furnish the results to the VA.

The auditors hope to have a draft audit report by mid-December.

Also in this area, a Social Security field investigation prompted by a match of Medicare death records and the active Social Security file turned up 3 uncashed insurance checks and 244 uncashed benefit checks. These 247 checks, which were recovered, totaled approximately $29,000.

As of October 15, 1981, six claims folders have been identified; all the payees were surviving spouses or parents. Regional office personnel have reviewed these cases and, based on evidence obtained by Inspector General investigators, payments have been terminated or suspended. They now are looking at each case to determine if these payees were sent

other checks to which they were not entitled. DVB field examinations will be conducted if the date of death cannot be determined by the evidence of record or if checks remain outstanding.

Impact of the Recent Court Decision

I would like to mention very briefly a lawsuit in which the Committee has expressed interest and which has generated some publicity. On September 30, 1981, a judge of the United States Distict Court for the District of Columbia held that three VA documents on the subject of ionizing radiation disability claims are invalid because they were not promulgated in accordance with the rulemaking procedures of the Administrative Procedure Act (APA). Gott v. Cleland, No. 80-0906.

The three documents in question are the Memorandum of Understanding in which the Veterans Administration and the Defense Nuclear Agency agreed on exchanges of information in the development of radiation exposure data for veterans claiming disability resulting from participation in nuclear weapons tests; section 0-20 of DVB Program Guide 21-1, which contains information relating to such claims; and paragraph 22.05.1 of DVB Manual M21-1, which sets forth procedures for developing information from claimants as to any exposure to radiation from nuclear detonations.

Despite VA's assertion that the challenged documents are merely concerned with the development, exchange, and dissemination of information related to radiation claims and are not rules or regulations subject to the APA, the court held to the contrary.

We acknowledge our responsibility to issue regulations pursuant to the APA, but believe that the documents challenged in this litigation are not regulatory and do not fall within the APA's requirements. The General Counsel is now preparing to pursue the case in the Court of Appeals.

Staffing Levels

The Continuing Resolution provided for a Departmental staffing level of 16,200, with a funding level of $445,257,000 for the Department's operations. Because of increases in nonsalary expenses, the appropriation will support staffing of 15,894. As you are aware, however, the entire budgetary situation with respect to FY 82 is presently under review. Our Fiscal Year 1983 request will depend upon our final 1982 figure.

In a related matter, we have been notified by OPM that special salary rate employees will not receive the 4.8% pay raise. This decision, which departs from OPM's past practice of granting the increase to both general schedule and special rate employees, will affect approximately 4,000 VA employees, including our Rating Board doctors.

Special rate salaries will be set at whatever rate on the new pay schedule is nearest to the employee's present salary without reducing it. While this will give these employees minor pay increases, they will not get the 4.8% increase they had been expecting. We are working closely with Controller and ODM&T officials to ensure that necessary payroll and personnel system changes are accomplished.

OPM is wrapping up its annual review of special salary rates, in which they look at staffing problems and compare salaries on the current schedule to those prevailing in the public sector for a particular occupation. Special salary rates may be increased, reduced further, or remain the same, depending on the results of this review. We have been told that, if reductions are necessary, OPM guidelines will provide that no employee will suffer a pay loss.

Mr. Chairman, this concludes my prepared remarks. I and the other witnesses will be glad to answer any questions you or the other Committee Members may have.

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201 N. Washington Street
Alexandria, Va. 22314 (703) 549-2311

The Retired Officers Association

Statement of

THE RETIRED OFFICERS ASSOCIATION

before the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON VETERANS' AFFAIRS

Presented by

COMMANDER JOHN F. WANAMAKER, USN, RETIRED

Deputy Director, Legislative Affairs

October 27, 1981

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Mr. Chairman and members of the Subcommittee:

I am Commander John F. Wanamaker, United States Navy, Retired, Deputy Director Legislative Affairs of The Retired Officers Association (TROA) which has its National Headquarters at 201 North Washington Street, Alexandria, Virginia. Our Association has a membership of over 305,000, former and active duty officers of the seven Uniformed Services.

I want to thank the members for providing me this opportunity to present the views of The Retired Officers Association on issues within the oversight responsibility of this subcommittee.

Disability Compensation

The Disability Compensation program is the largest benefit program administered by the Veterans Administration. I want to commend this committee for holding these oversight hearings, to insure that the current programs are accomplishing the purpose for which they were intended, but also to insure that the taxpayer's dollars are being best utilized to meet the requirement of providing disabled veterans compensation for loss potential earnings.

The veteran's disability compensation programs purpose is to provide relief from the impaired earning capacity due to disease or injuries resulting from military service. The current disability compensation has serious flaws which I would like to bring to the attention of this subcommittee for consideration.

First, the basic rates of disability compensation are inadequate. The ratings according to Section 355 are to "be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civilian occupations." I would call the committee's attention to a comparison to the government's range of compensation for it's civilian employees. The monthly rate of compensation under Section 8110 title 5 USC may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15 and in the case of total disability may not be less than

75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less. These rates would currently be $3132/month and $586.29/month. I would suggest, from this, that those military employees that receive the basic pay equal to the GS-15 and are totally disabled should receive the same or similar compensation which is 66 2/3 percent of their monthly pay or $2784. The military veteran employee would receive $1,130 or less than half as much. This single comparison of the total disability ratings between veterans and civilians is sufficient for the committee to task the Administration to develope a comparison for all percentage of disability ratings. I maintain that should the military employee be an aviator, nuclear engineer or medical officer that such specialized skills and other educational accomplishments should be considered when making compensation determinations.

I believe that the members of this committee should insure that a service connected disabled veteran receives at least as favorably compensation as that paid to a disabled civilian employee.

I strongly urge the committee to review the wording in section 355 of title 38 and suggest that the vague term "average impairments of earning capacity" does not meet veterans requirement for disability compensations. It's very probable that the statute requirement that disabilities must be rated in percentages does not provide the Veterans Administration administrator enough flexability in making compensation determinations. When one tries to provide compensation for persons disabled, one must consider the individual differences of earning capability lost; such as between a private and skilled medical officer. A single percentage rate will not satisfy this difference. It may be necessary to start all over and develop a new program.

Mr. Chairman, there exists one group of veterans that are not adequately compensated for service connected disabilities. The group to which I refer are those veterans who have served 20 or more years and who have become retirement eligible for years of service. If they should become disabled on active duty, these veterans would receive the greater of the disability retired pay or retired pay based on years of service. The length of service retiree who is also disabled must in effect pay for his own disability compensation. He must forfeit

an equal amount from his retired pay for years of service -- in order to receive the VA disability compensation. Veterans disability compensation is paid to replace future earnings lost because of disease or illness attributed to military service. Military retired pay for longevity, on the other hand, has no connection with disease or injury. The payments are for two completely different circumstances and should be paid concurrently. An inequity occurs when a Civil Service employee veteran can receive VA disability compensation while employed and also while in retirement without a reduction in either annuity. He can even use his years of military service for credit toward his civil service retirement. I ask you, Mr. Chairman and members of the subcommittee, "Where is the basis for fair and equal compensaton for injuries in these situations?" I strongly urge this subcommittee to favorably consider legislation currently before this committee to correct this inequity.

Unemployment Compensation

As of April 1, 1980, the various states, in order to meet the federal approval of their Unemployment Compensation systems, reduced unemployment compensation by the amount an individual receives in other retirement income. This other income includes periodic payments received as military disability retired pay and veterans' disability compensation. This federal law has now been amended to allow states the option to offset the Unemployment Compensation for those receiving retirement income. Most states still require an offset by receipt of VA disability compensation. I maintain that this completely refutes the intention of the Congress in providing the disability compensation. I strongly urge this subcommittee to favorably consider legislation to correct this anomaly. I believe that VA disability compensation should be just that, and should not be the basis for reduction in other federal or state entitlements to which they may otherwise be eligible.

The Public Assistance and Unemployment Compensation Subcommittee, Committee on Ways and Means is addressing this issue in hearings tomorrw. I urge the members of this subcommittee to bring their influence upon that committee in this important matter.

Dependency and Indemnity Compensation

Mr. Chairman, I will now address the Dependency and Indemnity Compensation (DIC) program. This program provides benefits to the survivors of member

or former member whose death occurs on active duty or as a result of a service connected disability. The monthly rates paid to a surviving spouse are based on the pay grade of the service member at the time of death or release from military service. I recommend that the benefit schedule be truly increased, as necessary, to reasonably insure the maintenance of the survivors' standard of living. Our nation has a long outstanding record in providing benefits to the survivors of those whose husbands and fathers may have given their lives in the service of their country. For this, our nation and this committee, in exercising its responsibilities in this regard, can be justly proud.

There have been some, who have expressed the opinion that a standard "flat rate" be established to pay all surviving dependents. Those who advocate this have no understanding for the basic concept under which the Dependency and Indemnity Compensation program is established. I might add that a 940 page study conducted by the Senate in 1978 recommended that the current DIC method based on grade/rank be maintained and adjusted periodically for the cost of living. The DIC program attempts to replace the potential earnings lost to a family as a result of the service member's death. I have prepared a chart which illustrates the replacement of wages through the DIC program administered by the Veterans Administration and then makes a comparison with that provided to federal civilian employees of similar income.

You will note in referring to the chart that I have converted the military Basic Pay to Regular Military Compensation (RMC) which includes factors for subsistance and housing allowances. These components are generally valued at approximately one-third the basic pay of the service member. By using the accepted replacement income of 50 percent and comparing column 5 of the chart, all but the lowest enlisted and officer grade catagories fall below this accepted level under the current DIC program for a surviving spouse with no dependents. As an example you will note that the surviving widow of an 0-5 with 16 years of service will receive an amount of $676 in Dependency and Indemnity Compensation. This replaces only 18 percent of Regular Military Compensation at time of death. Generally one-fourth is considered the amount one would expend for shelter alone. This widow would be unable to provide the other necessities of life. Obviously, this widow would be in trouble if she should lose her husband, and I believe that most members would agree, the DIC does not meet this woman's basic needs in income replacement.

I would now ask the members to compare the 50% income replacement of the federal Civil Service with the military member (compare column 4 with column 8). I implore the committee to provide a similar program to its military members.

The civil service surviving widow can receive the benefit until death or until she remarries before reaching age 60. This committee should authorize surviving widows, who are receving benefits under the DIC program, to continue to receive these benefits if they should remarry after age 60. Other federal programs such as Social Security, Military Survivors Benefit Plan and the Civil Service Survivorship Annuity Plan have been modified to prevent the necessity for these older beneficiaries from "living in sin." I urge you to provide the same consideration for the DIC widows. The costs of such a proposal would be minimal.

Budget Inpact on Compensation Program

This sensitive issue must be addressed, since during the consideration of the FY 1982 Budget there were serious proposals which could have a devastating impact on veterans programs.

First, the House Post Office and Civil Service Committee proposed legislation (without benefit of hearings) which would have reduced about 114,000 veterans' salaries by the amount they receive in military retired pay. Many in this category receive military retired pay for disabilities resulting from military service. This proposal would have had an adverse impact on Reservists who spent 20 or more years in service to their nation without any reward had the proposal been enacted. I believe it falls on this committee to insure that veterans benefits be protected and therefore members of this committee should have objected to the action of the HPO&CS committee. That same committee has been especially hostile to veterans by removing the veterans preference eligibility from those veterans who may also be military retirees with 20 or more years of service and who may attain the grade of 03 or above.

I consider the actions of the HPO&CS committee to be a breach of faith to the veteran community. The Senate Veterans' Affairs committee, in reaction to the First Concurrent Budget Resolution, held hearings on 7 bills only seven days after their being introduced. Each of those bills were attempts to curtail or reduce veterans' programs. This is a poor method of legislating and I would suggest that this committee resist this haphazard approach to the review of

veterans' programs. I would like to comment on several of these proposals that were only set aside when it was determined that the required savings could be accomplished by deferral and delay.

Reduction in VA compensation by the amount an individual may receive in Social Security benefits by reason of disability or having reached age 65. You must consider that a spouse's benefit may accrue to a veteran by Social Security attributed to anothers employment. A benefit derived from a wife's work who may also provide the care and attendence for a 100% disabled veteran should not have that spouse's benefit be the basis for a reduction in veteran's benefits. Our association strongly objects to this proposal.

It has also been proposed that a single check be sent by the various military departments which would reflect his retired pay and any VA benefits.

First, I fail to see how this could reduce costs since each department/ agency must separately determine the amount of each benefit and I believe addn. costs would result by the need for coordination. It's strange that certain sectors/ which have opposed our efforts to authorize military retirees to pay VGLI premiums through military allotments (reason for this opposition -- as too costly), now would consider combining the two compensation systems.

One last thought, whether the budget process was responsible or not the increase in compensation and DIC results in a reduction in the benefit to the beneficiaries. Even a one month delay results in over a half million dollars loss to beneficiaries even though the payments are made retroactive to 1 October. The delay adds costs to the taxpayers through the necessity of issuing additional checks as well. There has been considerable talk of proposals to change the method by which entitlement programs are adjusted. This committee should insure that any change will not forever place the disabled veteran and dependnents of veterans in a position whereby their standard of living will constantly diminish. To change the CPI adjustment to the lower of the average wage growth or CPI increase, or to a lesser percentage of the CPI would cause a constant reduction in real income. These approaches should be resisted with all your vigor.

I again want to thank the Committee for allowing me to provide the views of The Retired Officers Association on these important matters. I will be glad to provide answers to any further questions that you may have.

VETERAN COMPARISON

DIC (NO CHILD)

(1) PAY GRADE (YOS)	(2) BASIC PAY MO.	(3) RMC	(4) DIC	(5) %RMC	CIVIL SERVICE WIDOW (NO CHILD) (6) GRADE	(7) MO. SALARY	(8) 50% ANNUITY
E-1	551	735	415	56	GS-2	782(min.)	391(min.)
E-2	618	824	428	52	GS-2(3)	826	412
E-3(0-2)	678	903	438	49	GS-2(7)	908	454
E-4(0-4)	822	1095	466	43	GS-4(5)	1084	542
E-5(0-8)	966	1287	479	37	GS-5(7)	1286	643
E-6(0-12)	1156	1541	490	32	GS-7(6)	1548	774
E-7(0-14)	1332	1775	514	29	GS-9(4)	1786	893
E-8(0-16)	1542	2055	542	26	GS-9(9)	2056	1028
E-9(0-20)	1844	2458	567	23	GS-11(9)	2487	1244
W-1(0-12)	1384	1845	525	28	GS-10(2)	1847	924
W-2(0-16)	1615	2153	546	25	GS-11(4)	2160	1080
W-3(0-20)	1917	2555	562	22	GS-11(10)	2553	1277
W-4(0-22)	2254	3004	595	20	GS-13(3)	2985	1493
O-1	1057	1408	525	37	GS-7(3)	1415	708
O-2(0-2)	1329	1772	542	31	GS-8(7)	1763	882
O-3(0-4)	1846	2460	580	24	GS-11(9)	2488	1244
O-4(0-10)	2216	2954	613	21	GS-12(9)	2981	1490
O-5(0-16)	2785	3713	676	1[illegible]	GS-14(5)	3748	1874
O-6(0-20)	3354	4471	761	17	(max. 4176)		2088
O-7(0-20)	4176	5529	824	15	(max. 4176)		2088
O-8(0-20)	4176	5529	903	15	(max. 4176)		2088
O-9(0-20)	4176	5529	970	15	(max. 4176)		2088
O-10(0-20)	4176	5529	1061	15	(max. 4176)		2088

Statement of

The American Legion

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by

PAUL S. EGAN, ASSISTANT DIRECTOR
NATIONAL LEGISLATIVE COMMISSION

and

ROBERT E. LYNGH, DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION

before the

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

on

IMPACT OF PROPOSED BUDGET AND STAFFING CUTS ON THE
DEPARTMENT OF VETERANS BENEFITS OF THE VETERANS ADMINISTRATION

OCTOBER 27, 1981

STATEMENT OF ROBERT E. LYNGH, DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS AFFAIRS
HOUSE OF REPRESENTATIVES
OCTOBER 27, 1981

Mr. Chairman and Members of the Subcommittee:

The American Legion appreciates the opportunity to appear this morning. It is our understanding the Subcommittee is considering the possible effects of further budget cuts on the operations of the Department of Veterans Benefits of the Veterans Administration; the effect of delays in filling key staff positions in DVB; timeliness of implementation of new legislation and analysis of review of unemployability cases.

The American Legion seizes this opportunity to protest once again, in a Congressional forum, the continuing efforts of the Office of Management and Budget to curtail funding for the operations of the Veterans Administration.

We have said, and we say again that the veterans of the nation understand the need for fiscal austerity in a time of high inflation and increasing budget deficits that in turn feed the inflationary pressures on the economy.

In the budgetary dispositions that were made by the new Administration in the Spring of this year, The American Legion supported what became known as the Gramm-Latta Resolution, or the Reagan Bipartisan Budget. In that allocation of funds for activities of the Federal Government, veterans programs were slated to lose something in the neighborhood of $110 million. This was down from

the $840 million that OMB proposed in March, to take from veteran programs. That $110 million was the approximate amount lost to veterans programs in the Budget Reconciliation Act of 1981 that went to the President for signature.

As a matter of fact, veterans lost one benefit in the Reconciliation Act - the burial benefit - to which loss The American Legion strongly objected, and which we will petition Congress to restore, because we believe it is a benefit earned and deserved by veterans who have honorably served the nation.

In any event, veterans programs did in fact give up some $110 million. This action was supposed to result in a Budget for VA for Fiscal Year 1982, that would approximate $24.8 billion. The American Legion believed this amount would be sufficient to maintain veterans programs and services at least on a status quo basis. We continue to have serious concerns about the condition of the medical care program, but that is not the subject for consideration today.

The Department of Veterans Benefits maintains a staff of some 16,000 in the 58 Regional Offices. These personnel have provided a level of service that, while not as prompt and efficient as we would like to have it, nevertheless has been able to dispose of applications for benefits within a generally reasonable time frame. We will say that the routine operations of DVB are a constant manifestation of the invaluable services performed by the service organizations, in that a monitoring of the claims service is clearly needed to keep it from bogging down in bureaucratic

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delays. The service organizations expedite and keep track of cases as they proceed through the system. If they did not do so there would be many more delays and lost cases than there are now.

Getting back to the point of the adequacy of the number of DVB personnel, we find ourselves now confronted by a new crisis. Following enactment of the Budget and Reconciliation Act, the fact is there has been no appropriation act for VA for Fiscal Year 1982. An appropriation measure was agreed to by the House and Senate, but it has not been passed, as we understand it, by reason of action by the Administration.

Therefore, VA, today, as is also true of other departments and agencies of government, is operating on a continuing resolution that extneds to November 20. This in itself creates problems for VA. But it is our understanding the situation is actually worse than that.

What has happened is that OMB has instructed VA to spend at 14% below the level agreed to in the Reconciliation Act - the level projected by the Administration following the President's most recent budgetary adjustments of September. In the case of VA, these September figures reverted to the figures allocated to VA by OMB in March of this year.

So what we have here are severe restrictions on the level of spending for the new fiscal year, imposed by OMB, without Congressional mandate. We do not see how this action can fail to impact stringently on every activity of the entire VA.

Our information - informal, but we believe reliable - is that under these current instructions from OMB, if they are maintained,

DVB stands to lose as many as 2373 personnel during FY 1982. This would be more than 10% of its total work force. Should that happen, there is no way DVB can maintain the present standard of service to its clientele.

In other words, loss of 10% of the work force by DVB is inevitably going to result in delay of benefits to entitled beneficiaries and claimants. Since most VA beneficiaries are poor, such delays are going to have a serious effect on the economic maintenance of many of these poor people. As far as The American Legion is concerned, that is completely unjustifiable.

It is our belief the Administration has exceeded the Congressional mandate in this matter of early funding for FY 1982. The continuing resolution made clear that funding was to be at the level of the compromise agreement between the Houses, on the appropriations measure, H.R. 4034. That is not how OMB has instructed departments and agencies to proceed. In the view of The American Legion, what is going on here is impoundment - an executive activity that Congress took note of some years ago with passage of the Budget Control and Impoundment Act.

The American Legion does believe, and recommends to the Subcommittee that in fact, Congress should call the Administration to account for failing to adhere to the legislative requirements of the continuing resolution under which the Executive Branch is now operating.

With reference to manpower levels in the DVB, as noted earlier, they are at the level of 16,000 personnel. We do not really know

whether this is too many, too few or sufficient. Our experience is that delivery of benefits is essentially adequate, but is certainly subject to improvement. If it were not for the work of the service organizations it would be worse than it is.

In its recommendations to the transition team at the advent of the new Administration, The American Legion offered the suggestion of a manpower study of the agency, to determine needed manpower levels to assure timely delivery of benefits. We continue to believe such a study would be a good idea, and we certainly think it should be done before any reductions to the extent of 10% of the total workforce in DVB are effected.

It is our hope the Subcommittee will intensively pursue this entire matter of manpower levels in DVB, before allowing any substantial reductions to be accomplished.

Concerning the matter of delays in assigning personnel to key staff positions, we believe, of course that key staff positions at the Central Office level should be regularly filled to assure Central Office policy support for the field. We assume some delays that have occurred recently may be the result of the extended transition the agency has experienced. The new management team is now installed and functioning. We note the senior positions in DVB are now filled. Should any further vacancies develop we will expect them to be filled with reasonable promptness.

It must be said that the management of the Department of Veterans Benefits is generally responsive to initiatives from this organization, and our relations with DVB management are good. The

essential problem with which we are always concerned is to attain an equal degree of responsiveness among personnel assigned to DVB field stations. With the number of people involved, our experience, which is to be expected, is that some are excellent, some adequate, some mediocre and some incompetent. We believe there is always a danger that incompetence will be rewarded in a bureaucracy. Where we encounter it and can document it, we demand that it be eliminated. We meet with mixed results in these efforts.

Concerning implementation of new legislation, we note, again without surprise, that the agency's record is mixed. We expect and usually experience prompt action in implementing delivery of new and adjusted benefits. Implementation of more complex legislation affecting benefits can be delayed - resulting often from the difficulty of drafting regulations - which require coordination with more than one element within the agency. In this regard it can only be said that no bureaucracy is noted for speed of action. Our concern - to repeat - is in delivery of new and adjusted benefits. We do believe DVB makes a good faith effort in that regard.

The Subcommittee is also concerned at this time with the Code 18 review. This review involves those service-connected cases in which the claimant is rated totally disabled by reason of individual unemployability, on an extraschedular basis.

Code 18 refers to section 18 of the General Policy in Rating as set forth in the 1945 Schedule for Rating Disabilities as amended.

This review was instituted about one year ago, and we understand it was from an expressed desire of the House Committee

on Veterans Affairs. At the outset, The American Legion was apprehensive that Rating Boards would interpret the review order as one to eliminate individual unemployability ratings. Our Service Officers were alerted to study thoroughly each case where the Legion is the designated representative and to intervene where necessary on behalf of the claimant.

We believe experience to date with the review has proved to be a vindication of rating board action generally within DVB. Statistics on the review, obtained from Compensation and Pension Service on October 21, 1981 showed:

68,086 cases reviewed under Code 18
42,416 cases confirmed and continued
8,981 cases control reestablished
13,137 NP cases changed to 100% schedular rating
3,501 cases reduced
51 cases pending

We have not received an excessively large number of cases from our Service Officers protesting action by Rating Boards - other than utilization of the appellate procedure. Our conclusion, therefore, at this point is that the review is being conducted in a generally responsible manner, and that it has not turned into a witch hunt.

As to the propriety of the review, although some of our Service Officers were somewhat alarmed at the outset, the National Organization of the Legion took the position that VA had the right to review cases rated on an extraschedular basis to assure the propriety of the rating - as long as the review was not to be used

as a device to reduce ratings for severely disabled veterans. In general we do not believe that has happened. Whether there is need for a continuation of the review, based on experience to date, is a matter for determination by the Committee and the agency. The Legion's function is to safeguard the entitlements of severely disabled veterans - as we have done and shall continue to do.

If the review continues, and if we detect a generalized effort to reduce ratings, especially of severely disabled neuropsychiatric cases, we shall make appropriate representations to the agency, and if necessary we shall petition the Congress through this Committee.

Mr. Chairman, we appreciate the opportunity to present our views at this time, and that completes our statement.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

STATEMENT OF

PHILIP R. MAYO, SPECIAL ASSISTANT
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO THE
COMPENSATION PROGRAM OF THE VETERANS ADMINISTRATION

WASHINGTON, D. C. OCTOBER 27, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the privilege of presenting to this distinguished Subcommittee the views of the Veterans of Foreign Wars of the United States regarding a general overview of the compensation program administered by the Veterans Administration.

As you know, Mr. Chairman, the basic element of all veterans benefits is the compensation program, which benefits in part some 2.2 million veterans for loss of earning power due to their service connected disability; and the dependency and indemnity compensation (DIC) program for 360,000 survivors of veterans who were killed while on active duty or who suffered a service connected disability and were permanently and totally disabled at the time of death. In that connection, we would like to commend this Subcommittee and the full Committee on their foresight in the passage of what is now Public Law 97-66, the "Veterans Disability Compensation, Housing and Memorial Benefits Amendments of 1981." That measure containes a much needed compensation and DIC payments increase, along with other provisions which we believe affect compensable veterans and their dependents in a positive fashion both now and in future years. Those provisions relate to the increase of the insurance coverage for certain veterans

up to $35,000; improvements in automobile adaptive equipment benefits; improvements in specially adapted housing assistance benefits; and provisions which restrict the VA's (and the OMB's) freedom to conduct cost comparison studies that may lead to the contracting out of important functions within the Department of Medicine and Surgery (as required under OMB Circular A-76, and which would cause an estimated reduction in personnel of perhaps 30,000) and which require the VA to submit major reorganization plans for congressional review nine months prior to their effective date. This latter provision relates primarily to the recent attempt to reduce the functions of the 58 VA Regional Offices into three (thereby causing the dismissal of approximately 1,600 personnel within the Department of Veterans Benefits). It is gratifying to the VFW that Congress, under the prudent and aggressive leadership of this Subcommittee and the full Veterans' Affairs Committee, has reaffirmed its support of veterans programs.

Mr. Chairman, it also appears that the TARGET system is operating with increasing efficiency. In view of this occurence, we are certain that continuing pressure will be applied on the Department of Veterans Benefits to further reduce the claims servicing personnel level. While such reductions may appear fiscally prudent when staffing levels for that department are reviewed, we respectfully submit that such may not be the case. Information available to us indicates that the various states, like the federal government, are facing fiscal problems that may require reductions in staffing in their Departments of Veterans' Affairs and may cause, as well, reductions in the number of County Service Officers. It is our view that such reductions should not occur. As you know, these state funded offices provide experienced counseling to veterans in claims actions for compensation and other veterans benefits, as well as providing needed assistance in VA hospitals. A reduction in this "pool" of experienced assistance to veterans and the VA, if such should take place, will cause increased workload burdens upon the VA, and the challenges facing that agency in this connection were detailed extensively before this Subcommittee in our statement on this subject on May 18, 1981. It is our view, Mr. Chairman, that claims for compensable disabili-

ties are effectively denied if informed decisions concerning personnel levels within the VA are not made, and we urge this Subcommittee to continue to exert forceful leadership in assuring that decisions relating to those levels for the VA are made on such a basis.

Mr. Chairman, in our statement before this Subcommittee on May 18, 1981, we discussed a number of matters related to compensation, and rather than detail those issues again at this time, the resolutions regarding these issues that were adopted at our most recent National Convention held in Philadelphia, Pennsylvania, are attached herewith for your review. They are: Resolution No. 605, entitled "Amend Current Law Regarding VA Service Connected Compensation"; Resolution No. 776, entitled "Radiation Exposure - Service Connection"; and Resolution No. 779, entitled "Cost of Living Increase for VA Beneficiaries." As will be seen, our views relative to these issues are unchanged.

In addition, the delegates also adopted Resolution No. 609, entitled "Disability Compensation Ratings," a copy of which is attached hereto. Mr. Chairman, it is our belief that the passage of legislation to protect compensable disability ratings after ten years will provide benefits to both our veterans and the VA. It is our experience that most compensable disabilities stabilize within a ten-year period and further examinations to substantiate such cases after the expiration of ten years divert much needed resources from areas that need attention in the VA--in both the Departments of Veterans Benefits and Medicine and Surgery. Simply stated, to make such a change in law, in our view, provides, in these times of fiscal restraint, an additional cost savings mechanism as well as sparing veterans the continued trauma of undergoing further time consuming examinations.

Mr. Chairman, we again commend you and this Subcommittee for your exemplary and sensitive leadership in matters relating to the well-being of our nation's veterans.

This concludes my testimony and I would be happy to respond to questions you may have.

Resolution No. 605

AMEND CURRENT LAW REGARDING VA SERVICE CONNECTED COMPENSATION

WHEREAS, current law denies concurrent payment of VA compensation and military retired or retainer pay; and

WHEREAS, concurrent payment of VA compensation and federal civil service retirement pay is authorized; and

WHEREAS, denial of concurrent payment of VA compensation and retired or retainer pay to military retirees is obviously discriminatory; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we support amendment of the law to authorize concurrent payment of VA compensation for service connected disabilities to military retirees, who are eligible for length of service retirement or retainer pay at time of separation.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States, held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 605

Resolution No. 776

RADIATION EXPOSURE - SERVICE CONNECTION

WHEREAS, a Congressional subcommittee has recently determined that the U.S. Government deliberately concealed the dangers of radiation exposure, due to nuclear testing, from civilians living near test sites during the 1950's and 1960's; and

WHEREAS, the Veterans of Foreign Wars of the U.S. believes that similar tactics were employed by the military during all atomic testing where military personnel were present; and

WHEREAS, hundreds of nuclear tests have been carried out, exposing service personnel to ionizing radiation, since the advent of the Atomic Bomb; and

WHEREAS, the manifestations of certain diseases related to exposure to ionizing radiation have been conclusively determined by medical science; and

WHEREAS, the military has not followed a rigid, complete follow-up program of identification, dosimetry data, physical examinations and care for these separated military personnel; and

WHEREAS, of the 2307 cases submitted as of 8/3/81, to the Veterans Administration, claiming service connection for disease due to exposure to radiation as a result of testing participation, only 63, or approximately 2.7 percent have been allowed; and

WHEREAS, since WWII there have been many cases of unexplained diseases, that have only one common denominator -- radiation exposure; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we urge Congress to recognize this real problem by instituting legislative measures that will authorize service connection for conditions medically recognized, regardless of recorded readings, as being reasonably attributable to radiation exposure, if the disease occurs after such radiation exposure, regardless of date of onset or diagnosis.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 776

Resolution No. 779

COST-OF-LIVING INCREASE FOR VA BENEFICIARIES

WHEREAS, payments to VA beneficiaries have continued to be eroded by inflation; and

WHEREAS, many of those in receipt of these benefits are on limited or fixed income; and

WHEREAS, many other segments of society have a greater opportunity to increase their incomes whereby they are not so adversely effected by those increases; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we urge Congress to enact legislation that will provide annual increases in an amount at least commensurate with the Consumer Price Index for all Veterans Administration beneficiaries.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 779

Resolution No. 609

DISABILITY COMPENSATION RATINGS

WHEREAS, Section 110 of Title 38, United States Code, now provides for the protection of all disability compensation evaluations that have been continuously in effect for 20 or more years; and

WHEREAS, permanency should be conceded for disability compensation ratings which have been in effect for 10 years without change in evaluation with no further examination scheduled; now, therefore

BE IT RESOLVED, by the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we seek to amend Section 110 of Title 38, United States Code, to provide that disability compensation continuously in effect at the same rate be protected after a period of 10 years.

Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.

Resolution No. 609

PARALYZED VETERANS OF AMERICA

STATEMENT OF

GORDON H. MANSFIELD, ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

OF THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS

OCTOBER 27, 1981

Mr. Chairman and Members of the Subcommittee, PVA sincerely appreciates this opportunity to express our concerns regarding the compensation program for service-connected disabled veterans and Dependency and Indemnity Compensation (DIC) benefits.

Compensation is for PVA's members an extremely important and necessary entitlement because, for catastrophically disabled veterans, it remains basically their primary source of income maintenance. Consequently, the National Board of Directors has passed a resolution stating that PVA will continuously work to ensure that compensation benefits are increased by an amount at least equal to the increase in inflation.

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PVA fully understands that the purpose of compensation, as contained in Chapter 11 of Title 38, United States Code, is to offset the diminished earning capability of service-connected-disabled veterans. We recognize, too, that in this time of rampant inflation it is becoming more difficult for Congress to ensure that such veterans do not suffer a decline in their economic status.

Mr. Chairman and Members of the Subcommittee, PVA is grateful for the efforts made by each of you and by the Members of the full Committee in securing passage of the "Veterans' Disability Compensation, Housing and Memorial Benefits Amendments of 1981," Public Law 97-66. This action does much to keep compensation benefits abreast of the erosion caused by inflation. During the past several years the rates of compensation have progressively fallen below the rates of inflation based on changes in the December-to-December Consumer Price Index (CPI). This means that, even with the periodic increases in the compensation rates, service-connected-disabled veterans have experienced a real decline in their financial well-being.

A year ago PVA requested of the Committees on Veterans' Affairs that compensation for at least the most severely disabled veterans receive increases sufficient to correct the deficiency that has entered the compensation program over the past several years. PVA sincerely appreciates the forthright manner which Congress employed when it provided the recent increases. The more severely disabled received increased benefits approximately equal to the rate of inflation and which were equal to the projected rate of inflation at the time the Committees on Veterans' Affairs had to make their decision and report the legislative proposal. PVA thanks each of you for conscientiously seeking to care

for the needs of veterans who have experienced the greater loss of earning capability in service to the Nation.

There are, however, several concerns regarding the compensation program which we must address. First, while PVA recognizes the intent of the Congress to adjust certain discrepancies in the compensation program which had developed over time, the establishment of varying rates of increases for different groups of service-connected-disabled veterans continues a potentially damaging precedent. PVA is concerned that such distinctions could possibly be applied to other veterans' programs and that the precedent established by the last two increases in compensation will serve as an example to those who would further restrict veterans' benefits under the guise of fiscal restraint.

A second area of concern regarding the compensation program is the recent proposal to offset compensation benefits by Social Security benefits. PVA strongly opposes any offset of compensation payments and is firmly committed to the position that compensation benefits are provided to compensate service-connected-disabled veterans for the loss of earning capability. To adjust one federal income maintenance program due to an individual veteran's receipt of benefits from another federal program is to deny the purpose of those programs. Compensation benefits were and continue to be provided for a specific purpose. The budget process and fiscal restraint must not be utilized as rationale for diluting that purpose.

A final area of concern for PVA regarding the compensation program is the need for increases in the presumptive period for certain neurological disorders.

Some veterans have experienced paralysis because of syringomyelia, pernicious anemia, amyotrophic laterial sclerosis, or transverse myelitis. These are diseases or dysfunctions which have similar effects on the individual, and all four are of unusual origin, perhaps arising from trauma (as with syringomyelia) or perhaps from exposure to toxic substances. The person on active military duty is quite likely to undergo unusual physical stress or to be subjected to harmful substances, and during the 96th Congress the Committees on Veterans' Affairs entertained legislation which would have alleviated financial hardships for certain of these veterans.

PVA is very grateful to Members of Congress who introduced legislation which would have recognized a presumption period for service-connection for veterans who have experienced certain neurological disorders. Congress has already provided for a seven-year period of presumption of service-connection after discharge in cases of multiple sclerosis, and we ask that this same benefit be extended to the very small number of veterans who have experienced syringomyelia, amyotrophic laterial sclerosis, transverse myelitis, and pernicious anemia. And, as more becomes known about the origin of multiple sclerosis, it may become necessary to extend the period of presumption of service connection for veterans who are victims of this progressive disease. We sincerely trust that this Committee will work in the near future to more closely examine the needs of veterans with these unusual and very destructive neurological conditions.

Congress has shown considerable generosity to veterans and their families, and PVA would like to thank the Members of this very important Subcommittee for representing veterans' programs before the Congress and to the Administration.

One example of your concern for veterans and their dependents is contained in the "Veterans' Disability Compensation and Survivors' Benefits Act of 1978." This law created a very beneficial provision that extends DIC benefits to surviving spouses and children of certain veterans who were rated 100-percent service-connected disabled at the time of death, but whose deaths have not been determined by the VA to be service-connected. PVA commends you for this legislation aimed at providing for the survivors of those veterans who are likely to have a shorter life expectancy and, quite importantly, may not be able to accumulate estates sufficient to provide for their survivors. Congress has worked, also, to ensure that DIC benefits keep pace with inflation and has consistently increased these benefits while addressing service-connected disability compensation.

Unfortunately, there remains in the DIC program the inequity that the survivor receives DIC benefits based on the veteran's military pay grade and not on his degree of disability. PVA has noted this problem before, and we truly hope that the 97th Congress will rectify it. Usually the surviving spouse of a severely disabled veteran has provided extensive care to the veteran because of his service-connected disability. Upon becoming widowed the spouse who receives DIC may be willing to seek employment but she would, in many cases, not have marketable skills due to the constant care needed by the veteran until his death. In addition, the spouse must seek employment at a time in life when most full-time employees would be considering retirement.

Mr. Chairman and Members of the Subcommittee, there are too many instances where DIC benefits do not approximate the needs of surviving spouses, after years

of service to the veterans, and in nearly every case these are the widows of veterans who served in the lower military pay grades.

Some surviving spouses, widowed after short marriages, remain entitled to VA educational benefits and are returning to schools and colleges to prepare themselves for the future. Those who are older and have been married to disabled veterans for longer periods of time no longer have the youthfulness nor the VA educational benefit eligibility to prepare themselves for self-sufficiency.

The VA, in 1978, presented to Congress and the President its "Evaluation of Benefits under the Dependency and Indemnity (DIC) Program." This study noted that the number of DIC recipients is decreasing, and that approximately half of the surviving spouses are in receipt of DIC benefits based on military pay grades E-1 through E-4. Their mean age, as of December 1976, was 60.49 years,

PVA urges this Subcommittee to propose legislation to restructure the DIC program to better care for the surviving spouses of veterans who served in the lower military pay grades. In these cases DIC should be awarded on the basis of the veteran's degree of disability, not on military pay grade. PVA asks that the DIC rate be at least 75 percent of the disabled veteran's monthly compensation rate at the time of death. It must be remembered that these spouses helped disabled veterans live free of expensive institutions, at a savings to the government. Also, DIC benefits based on 75 percent of the veteran's monthly compensation rate will be computed only on basic compensation and will not include awarding a surviving spouse any portion of the veteran's aid and attendance allowance. PVA feels that this is a reasonable request for spouses who have served the nation by helping care for service-connected disabled veterans.

In summary, Mr. Chairman, PVA appreciates the recent efforts of this Subcommittee to improve the compensation benefits for service-connected disabled veterans and Dependency and Indemnity Compensation benefits. We ask, however, that you give consideration to our concerns regarding the fragmentation of veterans benefits, the threat of offsetting compensation benefits by other federal programs, and that you review the presumptive periods for neurological disorders. We furthermore urge this Subcommittee to restructure the DIC program so that deserving surviving spouses of such veterans will not suffer financial hardships after years of marriage to service-connected disabled veterans and after caring for them at the expense of developing their own careers.

Mr. Chairman and Members of the Subcommittee, on behalf of the members of Paralyzed Veterans of America, I appreciate the opportunity to speak today, and this concludes my statement. I will gladly answer any questions that I can.

NATIONAL ASSOCIATION of MILITARY WIDOWS
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STATEMENT OF JEAN ARTHURS

PRESIDENT

NATIONAL ASSOCIATION OF MILITARY WIDOWS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, PENSION, AND INSURANCE

COMMITTEE ON VETERANS' AFFAIRS

HOUSE OF REPRESENTATIVES

OCTOBER 27, 1981

NATIONAL ASSOCIATION of MILITARY WIDOWS
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I am Jean Arthurs, president of the National Association of Military Widows. We are grateful for the privilege of appearing before this Committee today to present the views on dependency and indemnity compensation for the surviving spouses who will be affected by this legislation.

To give you a short preview of the DIC widow, dependency and indemnity compensation is based upon the government's obligation to provide the surviving spouse a support substitution in exchange for the serviceman giving his life for his country. This means the serviceman was killed on active duty, or died of service-connected causes, which indicates the widow coped with the sudden tragic loss of the breadwinner, or had been caring for a disabled veteran until his death — and now has been trying to exist on about one-fourth of the basic income. Monetarily it means that the DIC widow is the survivor of a veteran with a shortened life span who was unable to accumulate an estate sufficient to provide for his survivors.

Often the surviving spouse of a severely disabled veteran has provided extensive care because of the veteran's disability. The cost of the extensive care often exceeds the allowance for service-connected disability.which led to many problems financial as well as psychological. We have many histories such as the amputee who also suffered a personality change . With the burden of care of the double amputee plus the mental harassment which was so great, the widow developed psoriasis which encompasses her entire body from the loss of her hair to the need to wear slippers instead of shoes. At these hearings I have often heard of the state of the veteran but there has not been a great deal of consideration for the families.of these veterans. They too have served our

country in endless ways and should be credited accordingly.

The primary legislative goal of the National Association of Military Widows is to seek equity among the Federal survivor benefit programs. By Federal, we mean the military and civil service who share the same paymaster and should receive the same equal benefits.

The Military Survivor Benefit Plan was enacted in 1972 and it allows widows to remarry at age 60 and retain the SBP annuity. The FECA, the RSFPP, and the social security allow remarriage as a means of permitting the older surviving spouses to live out their lives in comfort and dignity — and legally married, which is very important to their moral standards. The DIC is the only category of Federal spouses in which they are deprived of benefits if they remarry after age 60. In the interest of equity for all, this oversight should be corrected.

Statistics show that 79% of these survivors are widowed over age forty; 56% of them are over age 50 and many are much older and will never have a chance to remarry.

Surely this Congress has the compassion to pass Representative Whitehurst's bill, H. R. 644 which allows the DIC widow age 60 and over to remarry and retain her DIC annuity. In reality this involves a token number of widows and at least it would allow them to escape the loneliness of widowhood and live a morally respected way of life. The cost factor is negligible as so few could find remarriage. It would be a step toward making the DIC program equitable with the other government benefit programs.

It is said that the Veterans' programs are to assist the citizen soldier who serves his country in time of peril. If this citizen soldier loses his life serving his country, the DIC benefit is designed to <u>partially fill</u> this <u>void</u> for the widow. With the scenerio it takes to become a DIC widow, and they surely are survivors in the true sense of the word — it is difficult to see how they can survive on a "partially filled void" as indicated. Similar cases

under the FECA receive 55% benefit plus one year's pay; the Foreign Service widow receives 75% benefit and one year's pay plus a few other fringes. Why are DIC widows "partially endowed" at not more than 40% ? DIC is unique in another way — it is the only benefit program wherein the longer the serviceman served and the higher in rate or rank he attained, the less percentage in proportion the widow receives.

Being "partially" benefited means this DIC widow who has so gallantly moved from pillar to post, made due with an inadequate income, tried to educate children properly, cared for an ill husband, is often faced with not only the bereavement but the financial inability to cope with about 40% of the income. If she has a house she can't afford to live in it. The burdens are unending.

"Partially" benefited means the DIC widow must go to work regardless of circumstances, low pay in the military precludes the establishment of much of a savings account. Wives of military personnel have little opportunity to establish a career for themselves so they are unable to build up a retirement program for herself. Generally, their age and lack of skills make finding a job almost impossible in this youth oriented society of ours.

Widows of servicemen who served in the first and second World Wars are now in their sixties, seventies, and eighties. They are facing the hardships of the loneliness of old age, the inability to cope with the spiraling inflation, and the fears and uncertainties of a spartan existence. Condo conversions continue to fill my mail with horror stories.

It is our plea today that this Congress see fit to correct the inequities of the DIC program and place it on equal footing with the other Federal benefit programs.

When Abraham Lincoln stated in his address to the Nation that this country would care for the widow and orphan surely he meant on an equitable basis.

Thank you for allowing me to testify today. I will be glad to answer any of your questions.

Jean Arthurs

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STATEMENT OF
CHARLES E. JOECKEL, JR.
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, PENSION & INSURANCE
OF THE
HOUSE COMMITTEE ON VETERANS AFFAIRS
OCTOBER 27, 1981

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

The Disabled American Veterans appreciates this opportunity to appear here today to discuss the impact of the Administration's proposed Fiscal Year 1982 Budget reductions on the VA's Department of Veterans Benefits and other matters relating to the benefits provided to service-connected disabled veterans, their dependents and survivors.

Mr. Chairman, since a segment of our testimony today deals with the relationship between federal spending cuts and VA's ability to deliver essential service to veterans, I would like to take this occasion to extend to you and the members of the Subcommittee our sincere thanks. I refer, of course, to the provision contained in Public Law 97-66 designed to allow Congressional oversight of any plan which proposes to reorganize the Veterans Administration--particularly, those proposals aimed at centralizing VA claims processing.

In our view, the Administration's original plan to establish one VA Central Office for the adjudication of all VA claims would, no doubt, have had a drastic adverse impact on VA claimants nationwide. We think the concern for timeliness, efficiency and quality expressed by members of this Committee, and by many other members of Congress, brought about the demise of the "centralization" plan and resulted in the restoration of funds to the VA aimed at maintaining the staffing levels for the Department of Veterans Benefits.

For this, Mr. Chairman, you, Chairman Montgomery and the entire membership of the House Committee on Veterans Affairs have our sincere gratitude.

Further FY 1982 Budget Reductions

As you know, on September 24, 1981 the President announced a second round of federal spending reductions for Fiscal Year 1982. This new proposal is basically identical to the Revised Fiscal Year 1982 Budget Request submitted to the Congress on March 10, 1981.

In terms of the Veterans Administration, at least, these reductions have already been turned back by the Congress once and we hope they will be rejected again. However, the Administration is seeking a reduction of $451.7 million from the Fiscal Year

1982 VA appropriation as contained in H.R. 4034--the measure which implements the spending targets of the Administration supported Gramm/Latta Substitute Budget Resolution.

With respect to the subject matter of today's hearing, Mr. Chairman, the new round of Fiscal Year 1982 budget cuts propose to reduce VA's General Operating Expenses Account by some $55.8 million. These funds are generally provided for staffing and operating the Department of Veterans Benefits.

At this time, we are not prepared to charge that this reduction will cripple VA's ability to deliver essential benefit services to veterans. However, it can be said that (1) a reduction of this magnitude ($55.8 million) will result in DVB staffing below the personnel levels proposed by the Congress in both the First Concurrent Resolution on the Budget (Gramm/Latta) and H.R. 4034 (VA FY 1982 appropriation) and that (2) further staffing reductions in DVB will adversely affect the timeliness of VA claims processing.

For quite some time, Mr. Chairman, the VA has been asked "to do more with less." We think the VA has reached a point of diminishing returns. And, in spite of Honeywell's advertisement in The Washington Post last Sunday, we simply do not believe that the on-line capability of the Target Computer System substantiates

further staffing reductions in DVB or additional cuts in operating expenses.

Further, Mr. Chairman, Public Law 97-51 provides emergency funding for the government for the period October 1, 1981 through November 20, 1981. This law requires that VA programs be funded at the levels contained in the Conference Report on H.R. 4034--the [illegible] Independent Agencies Appropriation Measure.

However, we have recently learned that the Office of Management and Budget has instructed that VA operations during the period covered by Public Law 97-51 (10/1/81-11/20/81) be limited to the levels specified in the President's September 24, 1981 Budget Revisions.

Considering this and the track record of this Administration thus far, we suspect that OMB will continue in its efforts to circumvent the intent of Congress--thus, inhibiting VA's ability to render service to veterans in an effective and efficient manner.

VA Unemployability Review

Mr. Chairman, the Disabled American Veterans, an organization with a membership comprised solely of veterans who have incurred a wound, injury or disease while serving on active military duty,

has an inherent interest in maintaining the integrity of VA programs designed to assist this nation's service-connected disabled veterans and their families. Accordingly, the DAV supports VA's ongoing efforts to review and evaluate its programs.

Having stated this, Mr. Chairman, there have been instances wherein, we believe, the VA has gone beyond the point of protecting program integrity and has entered the realm of over-review and over-evaluation for purposes other than protecting its programs. We think the VA's review of Individual Unemployability Cases is an example of the latter instance.

As you know, last year the Veterans Administration implemented a review of all Individual Unemployability cases involving veterans under the age of 60. This review was brought about by a Department of Veterans Benefits Circular 21-80-7 issued September 9, 1980.

As you might expect, Mr. Chairman, the VA's review of these cases has raised an atmosphere of speculation and apprehension. The DAV has become somewhat alarmed over VA's actions since the completion of its initial review of Unemployability Claims. Subsequent to the review, the VA requested by Hotline Call a copy of each new rating establishing entitlement to individual unemployability, considered plans to review cases of veterans who

are over the age of 60, considered plans to conduct a second review of all cases involving individual unemployability based on nervous conditions and has under consideration a proposal for a new DVB Circular, again, dealing with claims for VA individual unemployability benefits.

Mr. Chairman, the results of the VA's recent review of unemployability claims show that less than five percent (5%) of the nearly 68,000 cases were reduced to an evaluation below the 100% level. This, in our view, indicates that in 95% of the cases involving individual unemployability evaluations, the ratings established were factually and procedurally correct. Further, the reductions in benefits would have been less if VA Offices like Boston, Togus, Buffalo and St. Paul would have followed the intent of DVB Circular 21-80-7. The purpose of this Circular was to provide for development in individual unemployability cases and reductions were only to occur if the grant of individual unemployability benefits was clearly and unmistakably erroneous under VA Regulation 1105(A). However, it is obvious, based upon the statistics, that these offices took the Circular as a mandate for a witch-hunt--that resulted in many reductions in VA benefits without a conclusion that the original grant of individual unemployability was clearly and unmistakably erroneous.

Given these statistics, we believe there is cause for skepticism and concern, particularly, among those veterans receiving VA Individual Unemployability Benefits and who happen to reside in Massachusetts, Maine, New York and Minnesota. We have registered our concerns with the Veterans Administration and, with your permission, Mr. Chairman, I would like to make this correspondence along with VA's replies available for today's Hearing Record.

In our view, Mr. Chairman, the VA's review of unemployability claims has served its purpose--that is, insuring the integrity of this successful program. The VA was able to identify 13.2% of the 68,000 unemployability claims reviewed wherein employment controls were re-established. And, as I stated earlier, in an overwhelming number of these claims (95%), the VA found no basis on which to reduce benefits below the established 100% evaluation.

However, Mr. Chairman, we are alarmed over VA's latest proposal to issue still another DVB Circular which, in our opinion, constitutes nothing new, but rather, will intimidate VA field rating personnel--thus, inhibiting the independent judgement of local Rating Board members.

This proposed Circular was recently submitted to us for comment. The proposal sets out examples where, in the opinion of VA Central Office, VA field personnel used bad judgement in allowing benefits in unemployability claims.

However, Mr. Chairman, the examples used in the proposed Guideline are, at best, weak, fail to elaborate on the pertinent facts in each case identified and question the independent judgement of Rating Board members. If the proposed Circular is allowed to be promulgated, it will not, in our view, be utilized as a training tool by local Rating Board members, but will serve only to inhibit free and independent judgement of VA rating personnel.

Finally, Mr. Chairman, considered separately the action taken by the VA thus far concerning unemployability claims would appear as a matter of routine business. However, closer examination leads us to believe that the VA has abandoned the concept of review and evaluation in the interest of protecting program integrity and has set a deliberate course to "tighten up" on unemployability claims. The best example is found in the August 20, 1981 Hotline Call to Field Stations requesting copies of only those cases where Rating Boards granted individual unemployability benefits--implying there is no interest in denied claims.

Over the years the Veterans Administration has held as a matter of policy that the laws and regulations which establish entitlement to the various benefits provided to veterans should be liberally interpreted and applied. Needless to say, Mr. Chairman, the DAV is opposed to any effort which we believe to be contrary to this policy.

Dependency and Indemnity Compensation and Public Law 95-479

Although not specifically a topic of today's hearing, Mr. Chairman, I would like to take this opportunity to call your attention to, what we believe, is a tragic inequity relating to VA benefits provided to certain widows of veterans who prior to death were evaluated as totally and permanently disabled.

As you know, Mr. Chairman, Public Law 95-479 added a provision to law allowing the payment of DIC benefits to the survivors of veterans whose deaths were not directly traceable to military service or service-connected disability, providing that: the veteran had been continuously rated as totally disabled for a period of not less than ten years immediately preceeding death or, if so rated for a lesser period, was so rated continuously for a period of not less than five years from the date of discharge or release from active military duty.

It has been recently held by the VA General Counsel and now considered policy of the VA, that when such a totally disabled veteran dies, DIC is payable only in those instances where the veteran had actually been in receipt of compensation at the 100% rate for ten or more years. No concessions are made for those veterans who are found to have had entitlement to receive the 100% rate but, based upon the presence of a clear and unmistakable error in a previous VA decision, did not actually receive the compensation payments.

It is with this policy that the DAV takes issue. We feel that if the facts of a case are sufficient, and a veteran (except for VA error) would have been entitled to receive VA compensation at the 100% rate for 10 years prior to death, then entitlement to DIC payments should be extended.

VA General Counsel, however, has held that clear and unmistakable error in a previous decision cannot be declared posthumously, to create entitlement to DIC benefits, as during the veteran's lifetime available remedies of law existed. Should the veteran have felt that the percentage evaluation for disability was arbitrarily low, these remedies could have been applied. The General Counsel also stated that if a clear and unmistakable error existed, then it would be very unlikely that it would go unremedied if the veteran exhausted all avenues of redress.

While there may be a degree of credence to this opinion, Mr. Chairman, we believe that such an argument cannot be applicable in all cases. There are areas of disability evaluations that are so technical in nature that the average veteran would not be in a position to question VA's decision.

As you know, the Board of Veterans Appeals has jurisdiction to make decisions on all claims for benefits administered by the VA and is empowered to correct an obvious error in the record.

Prior to the General Counsel's Opinion of March 24, 1981, the BVA had latitude to correct a previous error for the purpose of establishing entitlement to DIC payments under 410(b)(1), and we are aware of one such decision. However, since publication of the General Counsel's Opinion, VA policy has been established which precludes the Board of Veterans Appeals from allowing DIC benefits in these circumstances. A recent decision made by the Board dealt with a veteran rated totally disabled for 9 years, 361 days, and upon the allegation of error that would have established an earlier effective date, the Board dismissed the question as moot.

It is also noteworthy that during the calendar year 1980 the Board of Veterans Appeals reviewed 91 separate claims dealing with alleged clear and unmistakable error. Of that number, 46

were favorably resolved (in excess of 50%). The sole issue in these claims was error being committed in previous decisions. This number of cases should dissuade the opinion that it would be unlikely that errors would go unnoticed when a Regional Office Rating Board reviews any given claim.

Accordingly, Mr. Chairman, we respectfully request that the Committee carefully study the language of this statute and give consideration to amending the current law to provide DIC payments to those widows of deceased veterans who, at the time of their deaths, were evaluated as totally and permanently disabled from service-connected disability and who were "in receipt of or entitled to receive compensation at the 100% rate at the time of death."

This concludes my statement, Mr. Chairman, and I wish to thank you and the members of the Committee for giving us this opportunity to express our views on these important subjects.

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GENERAL COUNSEL'S OPINION, VETERANS ADMINISTRATION-Op. G.C. 2-81

March 24, 1981 (Opinion date)
May 21, 1981 (Publication date)

SUBJECT: Interpretation of 38 U.S.C. § 410(b)(1)(1976)

QUESTION PRESENTED: Was 38 U.S.C. § 410(b)(1)(1976) intended to create entitlement to survivors' benefits when a veteran was in receipt of compensation for total disability at death, but the total disability rating was not actually in effect for ten years because of Veterans Administration error?

COMMENTS: To illustrate the problem, the following fact pattern is offered:

> A veteran, at death, had been in receipt of compensation for total disability. Assume that death occurred in 1980, and the total disability rating had been assigned with an effective date in 1978. After the veteran's death, the Veterans Administration determines that the correct "effective date" for the total rating should have been in 1969, under the effective date rules specified in 38 U.S.C. § 3010 (1976).

Should the Veterans Administration consider such a veteran to have been "in receipt of . . . compensation at the time of death for a service-connected disability that . . . was continuously rated totally disabling for a period of ten or more years immediately preceding death," under 38 U.S.C. § 410(b)(1)?

Such a veteran would have been neither actually assigned a total rating continuously for the requisite number of years, nor in receipt of compensation at that rate long enough for his survivors to qualify. We have concluded that it would frustrate the congressional intendment were chapter 13 survivors' benefits granted in such cases.

No agency precedents addressing this question have been located. Therefore, in order to come to a reasonable interpretation of section 410 (b)(1), a brief examination of relevant legislative history is necessary. Prior to 1978, payment of DIC benefits was restricted to the survivors of those servicemembers who died on active duty or veterans who died post-service as a result of "service-connected" disabilities. However, it was brought to Congress' attention by the Blinded Veterans Association and other veterans' groups that certain service-connected disabilities, such as blindness, warrant a disability rating of 100% but are rarely found as contributing to the cause of death. Accordingly, under the prior law, DIC benefits were generally not available to survivors of these totally disabled veterans. Increased Rates of Compensation: Hearings Before the Subcommittee on Compensation, Pension and Insurance of the House Committee on Veterans' Affairs, 95th Cong., 2d Sess. 23 (1978) (statement of William W. Thompson).

The Blinded Veterans Association's concern produced a sympathetic reaction in Congress. As a result, section 204 of the Veterans' Disability Compensation and Survivors' Benefits Act of 1978 (Pub. L. No. 95-479; 92 Stat. 1564), which added the current 38 U.S.C. §410(b), came into being.

Section 204 and several other items in Pub. L. No. 95-479 were compromise provisions necessitated when the House and Senate passed markedly different versions of H.R. 11886, 95th Congress. *See* Joint Explanatory Statement on H.R. 11886, 124 Cong. Rec. 16896 *et seq.* (1978), *reprinted in* [1978] U.S. Code Cong. & Ad. News 3530 *et seq.* As originally passed by the House on June 28, 1978, H.R. 11886 did not contain anything similar to section 204, but the House did pass H.R. 11890 on July 25, 1978, which embodied a very similar proposal. H.R. 11890 would have provided dependency and indemnity compensation benefits to the survivors of veterans who were rated permanently and totally disabled from service-connected causes for a period of at least ten years (or continuously since service) and died of natural causes. *See, e.g.*, H.R. Rep. No. 1230, 95th Cong., 2d Sess. 2 (1978). While H.R. 11890 did not come to a vote in the Senate, the August 7, 1978 Senate-passed version of H.R. 11886 (as amended to substitute the language of S. 2828 as reported by the Senate Committee on Veterans' Affairs) contained a somewhat similar provision. 124 Cong. Rec. 4831 *et seq.* (1978). The legislative intent becomes clear from a reading of the House Committee on Veterans' Affairs' report on H.R. 11890, and the Senate Committee on Veterans' Affairs' report on S. 2828.

The House Committee considered H.R. 11890 to have sufficient safeguards to protect against reducing the DIC program to just another form of survivors' pension. One of the safeguards was the provision requiring the veteran to have suffered total service-connected disability for ten years or since discharge. It also required the veteran's widow to have experienced with him a good part of that loss by specifying that the marriage must have existed for at least five years. H.R. Rep. No. 1230, 95th Cong., 2d Sess. 2 (1978).

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The Senate Committee on Veterans' Affairs, in its report, acknowledged many of the same concerns. S. Rep. No. 1054, 95th Cong., 2d Sess. 30 (1978). In addition, the Senate Committee expressed concern that a significant percentage (12% to 25%) of DIC claims involving survivors of veterans rated totally disabled at death were denied because the deaths were not found to be service connected. It was the Committee's view that the appropriate federal obligation to the survivors should be replacement of the support lost when the veteran dies. S. Rep. No. 95-1054, 95th Cong., 2d Sess. 28 (1978), *reprinted in* [1978] U.S. Code Cong. & Ad. News 3465, 3486. Specifically, the Committee expressed its concern over situations like the following:

> Assume that a veteran who is totally blind from service-connected causes dies at the age of 55 from a heart attack, having been so disabled from the age of 22—a period of 33 years. During that period, his wife and he depended upon his disability compensation for income support, but, because his death is not service connected, she would not receive DIC.

The two Committees' reports document that one of the primary considerations in the enactment of the current 38 U.S.C. § 410(b) was Congress' recognition of the financial dependence of the survivors of deceased totally disabled veterans on the disability compensation available during the veterans' lifetimes. However, this situation is less and less plausible as the intervening time between a veteran's rating of total disability and his ensuing death is shorter than the ten-year criterion, and Congress considered a time limit to be necessary. Hearing on Pub. L. No. 95-479 before the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs of the House Committee on Veterans' Affairs, 96th Cong., 1st Sess. 19 (1979) (statement of Honorable G.V. (Sonny) Montgomery). The shorter the period of time between a rating of total disability and the veteran's death, the less dependent the survivors should be expected to be on the disability income.

Section 410(b)(1) reads:

> (b)(1) Notwithstanding the provisions of subsection (a) of this section, when any veteran dies, not as the result of the veteran's own willful misconduct, *if the veteran was in receipt of* (or but for the receipt of retired or retirement pay was entitled to receive) *compensation at the time of death for a service-connected disability that either (A) was continuously rated totally disabling for a period of ten or more years immediately preceding death,* or (B) if so rated for a lesser period, was so rated continuously for a period of not less than five years from the date of such veteran's discharge or other release from active duty, the Administrator shall pay benefits under this chapter to the veteran's surviving spouse, if such surviving spouse was married to such veteran for not less than two years immediately preceding such veteran's death, and to such veteran's children, in the same manner as if the veteran's death were service connected. (Emphasis added.)

Any ambiguity which a reader sees when separate phrases within the section are examined out of context is cured when the words are read together as a whole. An instrument must always be construed as a whole, and the particular meaning to be attached to any word or phrase is to be ascribed from the framers' purpose. *Philbrook v. Glodgett,* 421 U.S. 707 (1975); *see generally Sutherland, Statutory Construction* §§ 46.05, 47.02, 4th Ed. (1975), and 1980 Supp. Here the plain meaning of the words is apparent: the ten-year criterion is set, without an exception. Provision could have been made to cover cases in which *entitlement* to receive compensation for total disability were the touchstone (*see, e.g.,* 38 U.S.C. § 541(a)), but Congress instead chose the "in receipt of" language. This is presumed to have been a reasoned choice. We note in this regard that, as passed by the House, H.R. 11890 provided that entitlement would arise when a veteran "was in receipt of *or entitled to receive*" compensation at the total disability rate for the requisite duration. The eschewal of the "or entitled" language in the compromise agreement must be presumed a considered choice. Where there is support, as here, in the recorded expressions of legislative intent, we find no compelling reason to depart from the plain meaning of the statute. We conclude that section 410(b)(1) does not provide a basis for finding entitlement in the case you have posited.

We have determined as a matter of law that the statutory provision does not afford relief, but further submit that the policy considerations do not demand otherwise when the equities are examined. Your opinion request contemplates a situation in which the Board determines, belatedly (posthumously), that a veteran's disability rating was for a time erroneously low. Prior rating decisions that have become final because of failure to timely appeal can be retroactively amended only on the basis of "clear and unmistakeable error," i.e., not merely upon valid differences in the exercise of rating judgment. 38 C.F.R. § 3.105(a). There are, of course, available remedies when a veteran believes an assigned disability rating is arbitrarily low. The regional office can be petitioned for a reconsideration, or an appeal to the Board may be taken. A request for reconsideration of an adverse Board decision may be filed. If there has been "clear and unmistakeable" error in assigning the disability rating, it is very unlikely that it would go unremedied should a veteran exhaust all avenues of redress. (Or, it is at least unlikely that any true error the Board would discover *post-mortem* would not have been recognized by the Board *en vie.*)

Finally, we distinguish those agency precedents in which "constructive" receipt of disability compensation has been found in order to create eligibility for death benefits. In 69 Op. Sol. 228 (July 28, 1943), at issue was whether a veteran should be considered to have been at death "in receipt of pension [compensation] for service-connected disability" for purposes of burial benefits under Paragraph II of Veterans' Regulation Numbered 9(a), as amended by Pub. L. No. 76-866 (54 Stat. 1193, October 17, 1940). There, between the date of an original decision in May 1942 denying service connection and a reversal in July of that year by the Central Disability Board, the veteran died. Because accrued benefits were payable, the Solicitor determined that constructive receipt at death could be acknowledged. There, it is clear that entitlement to receive benefits existed, and that actual receipt at death was debarred only by the veteran's untimely death (not because of any remission in the pursuit of procedural remedies). Subsequent opinions issued by this office, e.g. in an unpublished memorandum forwarded to the Chief Benefits Director November 12, 1964, are similarly distinguishable because of the fact situations considered.

Because there is an adequate administrative remedy "at law" for curing erroneous disability ratings, we also volunteer the opinion that such cases as posed in your memorandum are not appropriate subjects for administrative relief. A painstaking review of all equitable relief decisions under 38 U.S.C. § 210(c)(2) has divulged none in which relief has been grounded in an erroneous VA rating decision. Such relief should be reserved for those situations in which no remedy exists at law. Were all rating decisions subject to reveiw under section 210(c)(2), a tremendous (and we would argue unintended) workload could arise. More important, as in the instant case the only appropriate remedy would be the creation of a running compensation (see, chapter 13) award in contravention of a statute as interpreted by VA. We have serious reservations as to the Administration's authority to create entitlement to a survivors' compensation award under section 410(b)(1) when Congress has provided a means by which the underlying eligibility defect may be appealed and cured.

HELD: As a matter of law, 38 U.S.C. § 410(b)(1)(1976) does not provide a basis for finding entitlement to survivors' benefits where a veteran, at death, had been in receipt of compensation for total disability but not for the requisite duration solely because of VA error in the rating assigned.

NOTE: This opinion was released in the form of a memorandum to the Chairman, Board of Veterans Appeals on March 24, 1981.

Robert E. Coy

ROBERT E. COY
Acting General Counsel

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September 16, 1981

Ms. Dorothy E. Starbuck
Chief Benefits Director
VA Central Office
810 Vermont Avenue, NW
Washington, DC 20420

Dear Ms. Starbuck:

Thank you for your letter of September 4, 1981 and for giving us an opportunity to respond to the proposed DVB Circular on problems in rating individual unemployability.

We not only acknowledge but support the right of the Veterans Administration to establish and maintain a system to monitor and evaluate its programs. This is clearly necessary to maintain program integrity and to ensure that the Veterans Administration is accepting and discharging its statutory obligations. However, we feel that your proposed circular amounts to an overkill and would subvert the intent of individual unemployability evaluations.

It appears from your letter and paragraph one (1) of the proposed circular that problems in establishing and maintaining control of individual unemployability cases are still present. However, we do not understand why it is necessary to issue a circular to resolve this matter. In 1977, the Veterans Administration reviewed all cases of veterans who were under 60 years of age and in receipt of a total rating due to individual unemployability. The purpose of this review was to ensure that proper control was established; after the review the control of these cases was to be interfaced into a new computer system. This new process would establish control and send VA Form 21-4140 annually directly to the veteran. If this computer system is now operational, the VA should have the capacity to identify cases which are not properly controlled. Accordingly, the Regional Office Directors and/or Adjudication Officers should be contacted and held accountable for their failure to comply with M21-1, paragraphs 49.14 and 55.08. This approach would narrow your focus and allow you to concentrate your total effort on identifying and providing direction to those offices which need assistance in establishing and maintaining control of cases involving individual unemployability evaluations.

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Recently, there has been a systematic effort to circumvent the professional judgement of the rating specialist. We believe this to be evident by an analysis of PG 21-1, Change 281, DVB Circular 21-80-7, hotline call requesting a copy of each new rating establishing entitlement to individual unemployability, plans to review cases of veterans who are over age 60, plans to conduct a second review of all cases involving individual unemployability based upon nervous conditions, and now the proposed DVB Circular.

We are also concerned about the adverse effect the circular will have on Rating Boards. The very nature of Rating Boards demands freedom from coercion and intimidation. In our opinion, this includes administrative actions which influence or alter the rating members' independent judgement.

It is within the broad discretionary authority of the rating specialist to render decisions which involve judgement. Historically, these decisions, including those based on judgement, were and are presumed to be correct in the absence of clear and unmistakable error.

The preliminary results from the most recent review revealed that less than five percent (5%) of nearly 68,000 cases were reduced. We believe this is an indication that at least 95% of the cases involving individual unemployability evaluations were factually and procedurally correct. In our opinion, the reduction rate would have been less if VA Offices like Boston, Togus, Buffalo, Columbia, Des Moines, St. Paul, Sioux Falls, Honolulu, Ft. Harris, Albuquerque and Cheyenne would have followed the intent of DVB Circular 21-80-7. The purpose of the cited circular was to provide for development and reductions only if the grant was clearly and unmistakenly erroneous under VAR 1105(A). However, it is obvious, based upon the statistics, that the aforementioned offices took the circular as a mandate for a witch-hunt. This resulted in many reductions without a conclusion that the original grant was clearly and unmistakenly erroneous.

It is also interesting to note that the proposed circular questions the judgement of the Rating Board. This is clearly shown by the cited examples. Most of these cases involved judgement and would not satisfy the stringent criteria of VAR 1105(A). In fact, we believe the examples as written are so weak that they should not be used as a guideline. For instance, 1(a) failed to cite all of the pertinent facts. What did the examination of December 16, 1977 show? Were the clinical findings sufficient to justify the assigned 60% evaluation? Where was the veteran working in 1972-1973? What was his job description? Did he quit his employment because of his respiratory disorder? Was there a

history of the findings shown in December, 1977 being present in 1972, 1973? We submit that if these questions were favorably substantiated by the record, the veteran was entitled to individual unemployability.

We suggest that most of your examples contain too many unanswered questions to be used as a format when considering individual unemployability. We therefore request that you reassess your approach or, at the very least, use examples which are clear, concise and leave no room for controversy.

Further, paragraph 7(c) of the proposed circular states in part--"although age will not be considered as a factor in evaluating service-connected disabilities or unemployability, age may be considered in determining permanence of the service-connected disability." We believe that this statement is misleading and contrary to VA policy.

In a letter dated May 27, 1980 from former VA Administrator Max Cleland, it was stated "when a specific service-connected disability worsens, even though that worsening may be the result of the deteriorating effect of age, whether from gunshot wounds with muscle damage, amputations or other disabilities, a higher evaluation provided by the Rating Schedule would certainly be in order." We consider the aforementioned statement a modification of pre-existing guidelines and therefore when viewed in the contemporary sense, age is relevant in the adjudication of service-connected disability claims, including individual unemployability.

Ms. Starbuck, for the reasons stated, we do not feel that the proposed circular would do anything to promote efficiency in the adjudication of cases based upon individual unemployability. In addition to the adverse impact on the rating specialist, we are sure that the veterans' community is wondering if there is a plan to discontinue individual unemployability evaluations.

In closing, we again wish to thank you for giving us an opportunity to express our views in an area which is so very important to veterans who are unable to obtain and maintain substantial gainful employment as a direct result of their service-connected disability(ies).

Sincerely,

NORMAN D. HARTNETT
National Director of Services

NDH:B:bc
bc: Mack Fleming

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OCT 2 1981

Mr. Norman Hartnett
National Director of Services
Disabled American Veterans
National Service and Legislative Headquarters
807 Maine Ave., S.W.
Washington, D.C. 20024

Dear Mr. Hartnett:

I appreciate the opportunity to respond to the comments and recommendations expressed in your letter of September 16, 1981, relative to the proposed circular concerning problems in rating claims based upon individual unemployability.

The field station rating boards are vested with broad discretionary authority in making decisions as to entitlement to benefits. It is imperative that those decisions be based upon sound judgment following development of all phases of each claim and that the decisions be in accordance with sound medical principles and VA regulations.

I wholeheartedly agree that rating boards must operate in an environment which is free from coercion and intimidation. However, this does not mean that the rating activity should be exempt from supervision and training. The proposed circular was prepared to serve as a tool which could be used to train new rating board members and to sharpen the skills of existing rating specialists. Such an instruction was found to be desirable after recent reviews indicated continuing difficulties in the rating of claims for total benefits because of individual unemployability.

The examples contained in the circular were included as training aids to illustrate areas of difficulty for various rating boards. The situations listed summarize the facts found from single cases and are to represent common rating errors. The examples are not intended to serve as guidelines for rating specialists. I believe that the instructions in the circular are sufficient to point out the purpose of the examples.

The 1977 project to provide for automatic release and control of VA Form 21-4140, Employment Questionnaire, was requested but never installed. The release and control for return of VA Form 21-4140 continues to rest solely with field station personnel (M21-1, paras. 49.14 and 55.08). Interest in automation of these functions was rekindled by the fact that 13.2% of the cases reviewed under the provisions of DVB Circular 21-80-7 had not been adequately controlled. The findings indicate that the control of cases involving grants because of individual unemployability continue to require the attention of management.

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Mr. Norman Hartnett

Lastly, I do not find that the reference to age in paragraph 7(C) of the proposed circular is either misleading or contrary to VA policy. The statement that age may be considered in determining permanence of disability is based upon VAR 1340(B). Paragraph 19 of the Schedule for Rating Disabilities and VAR 1341 clearly state, however, that age may not be considered as a factor in determining the severity of service-connected disability. Age, as such, is a factor for consideration only if the severity of nonservice-connected disability is evaluated for purposes of nonservice-connected pension.

I would like to take this opportunity to thank you for your comments regarding the proposed circular.

Sincerely yours,

DOROTHY L. STARBUCK
Chief Benefits Director

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October 29, 1981

Miss Dorothy Starbuck (20)
Chief Benefits Director
Veterans Administration
810 Vermont Ave., Rm. 300
Washington, DC 20420

Dear Miss Starbuck:

Thank you for appearing before the Subcommittee on October 27. Due to the large number of witnesses and the fact that time was at such a premium, the Subcommittee did not have the opportunity to ask all of its prepared questions. I am therefore submitting additional questions for insertion in the hearing record.

1. How many ratings on prisoner of war claims have you received to date? Have you analyzed them to ascertain any trends.

2. It is noted you are planning outreach efforts to contact the major veterans' service organizations. Does this include the American Ex-Prisoners of War and the American Defenders of Bataan and Corregidor?

3. You mention that 19 percent of the unemployability cases reviewed were increased to a 100 percent rating. I assume these were all neuropsychiatric cases. If so, can you tell us how many NP cases remain rated as unemployable?

4. Does your Statistical Quality Control review of current ratings show that rating boards are aware of the requirements for unemployability ratings?

In order that we can close the hearing record in a timely manner, we would appreciate your response to these questions within 10 days.

Sincerely,

SAM B. HALL, JR.
Chairman
Subcommittee on Compensation,
Pension and Insurance

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October 29, 1981

Mr. John F. Heilman
Legislative Director
Disabled American Veterans
807 Maine Ave., S.W.
Washington, DC 20024

Dear Mr. Heilman:

When Mr. Joeckel appeared before the Subcommittee on October 27, there were so many witnesses attending the hearing and time was at such a premium, the Subcommittee did not have the opportunity to ask all of its prepared questions. I am therefore submitting additional questions for insertion in the hearing record.

1. You testified concerning the review of individual unemployability conducted by the Veterans Administration and implied that your organization was displeased with some of the decisions. Do you have any claims identified in which you feel that benefits were reduced despite the fact that the veteran remains individually unemployable? If so, would you please submited identification of these claims for committee staff review.

2. In your testimony, you expressed displeasure with the draft of another DVB circular which was recently submitted to you for comment. Did you submit your comments to the Veterans Administration; and if so, what was their reaction to your comments?

3. Considerable testimony at the hearing concerned proposals to restore remarried widows to the rolls at age 60 despite their remarriage. Does your organization have a legislative position on such a proposal? What is that position?

In order that we can close the hearing record in a timely manner, we would appreciate your response to these questions within 10 days.

Sincerely,

SAM B. HALL, JR.
Chairman
Subcommittee on Compensation,
Pension and Insurance

Office of the Chief
Benefits Director

Washington, D.C. 20420

NOV 1981

Veterans
Administration

Honorable Sam B. Hall, Jr.
Chairman, Subcommittee on
Compensation, Pension and Insurance
Committee on Veterans' Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am pleased to respond to your letter of October 29, 1981, concerning additional hearing questions.

o Ratings on POW Claims: We have received ratings for 23 former prisoner-of-war claims--too small a number of claims on which to make projections. Approximately 75% of the claims involve a mental disorder. The provision of Public Law No. 97-37 pertaining to the anxiety states was the basis for the grant of service connection in five cases.

o Outreach Efforts: The American Ex-Prisoners of War, Inc., Tampa, Florida, and the American Defenders of Bataan and Corregidor, Inc., McKees Rocks, Pennsylvania, were on our outreach list. Letters have been sent to both organizations asking for their assistance.

o Unemployability Cases: The 19% of the individual unemployability cases reviewed which were subsequently raised to a 100% rating were all neuropsychiatric cases. The remaining number of NP cases rated as unemployable is not available; this statistical information is not currently maintained. We are certain there are some cases in which the service-connected neuropsychiatric disability, in combination with other service-connected disabilities, provides the basis for a rating of individual unemployability.

o Statistical Quality Control: A review of the latest Statistical Quality Control Validation Report for each of our regional offices revealed few exceptions in cases involving individual unemployability. While the relatively small number of exceptions shows that our rating boards are largely aware of individual unemployability rating requirements, the fact that exceptions were taken indicates that some room for improvement exists. We will continue to stress this area.

Please contact me if I can be of further assistance to the Subcommittee.

Sincerely yours,

DOROTHY L. STARBUCK
Chief Benefits Director

DAV

Motto: "If I cannot speak good of my comrade, I will not speak ill of him."

DISABLED AMERICAN VETERANS

NATIONAL SERVICE and LEGISLATIVE HEADQUARTERS
807 MAINE AVENUE, S.W.
WASHINGTON, D.C. 20024
(202) 554-3501

November 24, 1981

Honorable Sam B. Hall, Jr., Chairman
Subcommittee on Compensation, Pension & Insurance
of the House Committee on Veterans Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Hall:

This letter is in reply to your follow-up letter of October 29, 1981 relative to the Subcommittee Hearing of October 27, 1981 regarding VA's review of Individual Unemployability Claims.

First, let me respond to your request for the DAV to identify those Individual Unemployability cases wherein compensation "...benefits were reduced despite the fact that the veteran remains individually unemployable." The DAV did not indicate nor imply at the October 27, 1981 hearing any displeasure with VA rating practices.

Rather, our concern centers around the fact that the VA did not follow its own guidelines and that many VA Regional Offices interpreted the DVB Circular 21-80-7 (September 9, 1980) as a mandate to reduce Individual Unemployability claims. As you know, the Circular was designed to establish control through development of such claims. Reductions were to occur only if the grant of Individual Unemployability benefits was clearly and unmistakably erroneous under the provisions of VA Regulations 1105(A).

However, many claims reduced as a result of the review were based upon a judgemental decision rather than on a clear and unmistakable finding of error.

In reply to your inquiry regarding our comments to the VA with respect to the most recent DVB Circular 21-81-11 (October 15, 1981) concerning Individual Unemployability Claims, I am pleased to provide you with copies of our letter of September 16, 1981 and VA's reply dated October 2, 1981.

Finally, the DAV has no official position on the legislative proposal which would restore DIC benefits to eligible survivors who have attained the age of 60 and who have remarried. Although our organization has no official position, I would point out, however, that last year the delegates to our National Convention rejected a similar resolution. Putting aside for the moment the issue of program integrity, one must question the wisdom and rationale for the bill's "age 60" criterion. Why this particular age? Why seemingly discriminate against younger surviving spouses or surviving spouses with dependent children?

One can argue that if the decision is made to lift the present remarriage restriction, then it should be done for all categories of surviving spouses. However, the Committee and the Congress might very likely be inviting endless criticism from groups of surviving spouses who are excluded from the bill's coverage.

And what of the philosophical break from present program integrity? The fundamental, if not, sole intent of DIC benefits is to provide a measure of financial security to surviving spouses and orphans due to the service-connected loss of the breadwinner.

That is why, under current law, DIC benefits cease upon the remarriage of a surviving spouse and resume should the subsequent marriage terminate in divorce or death. Also, DIC benefits to surviving children cease upon the attainment of majority age--the sole exceptions being (1) continuation for "helpless" children and (2) temporary continuation based upon educational pursuits.

Clearly, in addition to service-connected death, eligibility to DIC payments is, and always has been, linked to dependency status and the absence of a provider. The measure proposed in your Committee clearly abrogates this criteria.

Accordingly, the DAV questions whether there is sufficient, compelling reason for such a change in law.

I hope this information will be helpful to you and wish to thank you for extending to us the opportunity to present our views on these important subjects.

Sincerely,

CHARLES E. JOECKEL, JR.
Deputy National Legislative Director

CEJ:ah

OCT 2 1981

Mr. Norman Hartnett
National Director of Services
Disabled American Veterans
National Service and Legislative Headquarters
807 Maine Ave., S.W.
Washington, D.C. 20024

Dear Mr. Hartnett:

I appreciate the opportunity to respond to the comments and recommendations expressed in your letter of September 16, 1981, relative to the proposed circular concerning problems in rating claims based upon individual unemployability.

The field station rating boards are vested with broad discretionary authority in making decisions as to entitlement to benefits. It is imperative that those decisions be based upon sound judgment following development of all phases of each claim and that the decisions be in accordance with sound medical principles and VA regulations.

I wholeheartedly agree that rating boards must operate in an environment which is free from coercion and intimidation. However, this does not mean that the rating activity should be exempt from supervision and training. The proposed circular was prepared to serve as a tool which could be used to train new rating board members and to sharpen the skills of existing rating specialists. Such an instruction was found to be desirable after recent reviews indicated continuing difficulties in the rating of claims for total benefits because of individual unemployability.

The examples contained in the circular were included as training aids to illustrate areas of difficulty for various rating boards. The situations listed summarize the facts found from single cases and are to represent common rating errors. The examples are not intended to serve as guidelines for rating specialists. I believe that the instructions in the circular are sufficient to point out the purpose of the examples.

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I would like to take this opportunity to thank you for your comments regarding the proposed circular.

Sincerely yours,

DOROTHY L. STARBUCK
Chief Benefits Director

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September 16, 1981

Ms. Dorothy E. Starbuck
Chief Benefits Director
VA Central Office
810 Vermont Avenue, NW
Washington, DC 20420

Dear Ms. Starbuck:

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The preliminary results from the most recent review revealed that less than five percent (5%) of nearly 68,000 cases were reduced. We believe this is an indication that at least 95% of the cases involving individual unemployability evaluations were factually and procedurally correct. In our opinion, the reduction rate would have been less if VA Offices like Boston, Togus, Buffalo, Columbia, Des Moines, St. Paul, Sioux Falls, Honolulu, Ft. Harris, Albuquerque and Cheyenne would have followed the intent of DVB Circular 21-80-7. The purpose of the cited circular was to provide for development and reductions only if the grant was clearly and unmistakenly erroneous under VAR 1105(A). However, it is obvious, based upon the statistics, that the aforementioned offices took the circular as a mandate for a witch-hunt. This resulted in many reductions without a conclusion that the original grant was clearly and unmistakenly erroneous.

It is also interesting to note that the proposed circular questions the judgement of the Rating Board. This is clearly shown by the cited examples. Most of these cases involved judgement and would not satisfy the stringent criteria of VAR 1105(A). In fact, we believe the examples as written are so weak that they should not be used as a guideline. For instance, 1(a) failed to cite all of the pertinent facts. What did the examination of December 16, 1977 show? Were the clinical findings sufficient to justify the assigned 60% evaluation? Where was the veteran working in 1972-1973? What was his job description? Did he quit his employment because of his respiratory disorder? Was there a

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history of the findings shown in December, 1977 being present in 1972, 1973? We submit that if these questions were favorably substantiated by the record, the veteran was entitled to individual unemployability.

We suggest that most of your examples contain too many unanswered questions to be used as a format when considering individual unemployability. We therefore request that you reassess your approach or, at the very least, use examples which are clear, concise and leave no room for controversy.

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Ms. Starbuck, for the reasons stated, we do not feel that the proposed circular would do anything to promote efficiency in the adjudication of cases based upon individual unemployability. In addition to the adverse impact on the rating specialist, we are sure that the veterans' community is wondering if there is a plan to discontinue individual unemployability evaluations.

In closing, we again wish to thank you for giving us an opportunity to express our views in an area which is so very important to veterans who are unable to obtain and maintain substantial gainful employment as a direct result of their service-connected disability(ies).

Sincerely,

NORMAN B. HARTNETT
National Director of Services

NBH:B:bc
bc: Mack Fleming

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